

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA ) 2:13-cr-00669-CDJ-1  
 ) September 9, 2014  
vs. ) Tuesday  
 ) Philadelphia, PA  
JAMAHL SIMMONS ) 11:35 a.m.-5:34 p.m.

HEARING ON DEFENDANT'S MOTION TO SUPPRESS  
BEFORE THE HONORABLE C. DARNELL JONES II

APPEARANCES:

For United States of SOZI PEDRO TULANTE, ESQ.  
America: U.S. ATTORNEY'S OFFICE  
615 Chestnut Street  
Suite 1250  
Philadelphia, PA 19106  
  
For Defendant: ROBERT E. H. MILLER, ESQ.  
LAW OFFICES OF ROBERT MILLER  
524 E. Johnson Street  
Philadelphia, PA 19144

Veritext National Court Reporting Company  
Mid-Atlantic Region  
1801 Market Street - Suite 1800  
Philadelphia, PA 19103  
1-888-777-6690

1 I N D E X

2	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
3	SEAN MCSTRAVICK	14	28	118	119
4	ANDREW KATERMAN	142	170	174	
5	CHRISTINE KELLIHER	176			

6

7

8

9 E X H I B I T S

10 NO. IDENTIFICATION PAGE

11 Government's:

12 A Application and affidavit of search 16  
 13 warrant, search warrant in Case No.  
 13-1285-M

14 B Application for search warrant, 25  
 15 search warrant, and affidavit in Case  
 No. 13-1294

16 C Application for a search warrant, 25  
 17 affidavit and the search warrant in  
 Case No. 13-1293-M

18 Defendant's:

19 None

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: We are here for purposes of  
3 litigating a suppression motion in this case. Let me  
4 first ask counsel, Mr. Miller, to state for the record  
5 the basis for the motion and exactly what it is  
6 counsel is seeking to suppress.

7 MR. MILLER: Yes, sir, Your Honor, and  
8 thank you for giving me the opportunity to speak at  
9 this time.

10 Exactly what I'm seeking to suppress,  
11 Your Honor, would be the warrant and any of the  
12 proceeds or the fruit, as result of the search, based  
13 on the warrant that ends in 581. That would be the  
14 Maximillian Settlement (ph) warrant, I say warrant  
15 that ends in 581, but the package, the priority mail  
16 package that is -- ends in numbers 581; specifically  
17 those numbers are 9505, 5000, 1165, 3316, 000581.  
18 That would be search warrant Case No. 13-293-M, and  
19 any -- not only what was obtained as a result of that  
20 warrant, but also anything that was obtained as a  
21 result of the fruits of that warrant.

22 THE COURT: All right. Just one  
23 minute, please.

24 MR. TULANTE: Yes, sir.

25 THE COURT: All right.

1 MR. MILLER: Also, I would like to bear  
2 the Court's attention to also the warrant that deals  
3 with the package that ends in the numbers 391. The  
4 complete priority mail package is -- the numbers for  
5 it, the parcel numbers of 9505 5000 148533 16000 391.  
6 That search warrant is labeled as Case No. 13-1294-M.

7 Also, if I may, just make sure this is  
8 correct, Judge. Also, the package that ends with  
9 apartment priority mail package that ends in the  
10 number 072. That complete priority mail number is  
11 9505 5000 1479 3313 000072. That Case No. on that  
12 search warrant is 13-1285-M. I believe that's an 8.

13 Okay. And so -- and not just that  
14 warrant, Judge, but also if I may on all these  
15 warrants, not just what was seized as a result of that  
16 warrant, but anything that was seized as a result of  
17 the fruits of that warrant, or the fruits as a result  
18 of or the fruits of any proceeds or implication that  
19 was obtained as a result of the execution of those  
20 warrants.

21 I'm trying to say it correctly, Judge.  
22 And, Judge, specifically the arrest warrant, I mean,  
23 is part of the fruit as a result of these warrants,  
24 the arrest warrant of my client is one of the things  
25 that -- specifically not all of them. I mean, there

1 are a number of things was obtained, but the arrest  
2 warrant also included in that.

3 Also, Judge, there is one that I don't  
4 know, I really didn't discuss this with counsel, but  
5 there's one that I think that we may be able to agree  
6 on, I don't know, but dealing with I believe the  
7 packet number is -- ends in 689, parcel 689.

8 And that parcel number is 4201 942 895  
9 055 0014 853 301 000 689. I believe we may be able to  
10 agree that this package was never seized, it was not  
11 searched, and that -- well, at least we can at least  
12 stipulate I believe to that extent, that that package  
13 was never seized and never searched. Am I correct?

14 MR. TULANTE: Yes, Your Honor, we put  
15 that in our motion, that's why I'm surprised Mr.  
16 Miller mentioned it, because it was never seized, nor  
17 searched, so I don't understand there'd be a basis for  
18 suppression.

19 MR. MILLER: Well --

20 MR. TULANTE: There was no search  
21 warrant accompanying it, no affidavit --

22 MR. MILLER: Well --

23 MR. TULANTE: -- so that's -- I just  
24 wanted to make sure --

25 THE COURT: All right. That's a

1 priority mail package that ends in 0689; is that  
2 correct?

3 MR. TULANTE: That's correct, Your  
4 Honor.

5 MR. MILLER: That's correct, Your  
6 Honor.

7 THE COURT: All right. You may  
8 continue.

9 MR. MILLER: That pretty much is it for  
10 the purposes of suppression here today, Judge.

11 THE COURT: And once again, you are  
12 asking the Court to suppress it because the warrants  
13 that were issued -- which were issued without probable  
14 cause?

15 MR. MILLER: Yes, that's correct,  
16 Judge. I can get -- I can really give it to you in  
17 real close -- I mean, very, very tight summation form.  
18 The one that ends in 391, the warrant was not signed.

19 MR. TULANTE: Your Honor, just to --  
20 for ease of reference and so everybody's on the same  
21 page, I put before the Court the exhibits that reflect  
22 the three warrants, just so we're talking about the  
23 same affidavits.

24 THE COURT: All right.

25 MR. TULANTE: I've given copies to Mr.

1 Miller as well.

2 THE COURT: All right.

3 MR. TULANTE: And I can put that on the  
4 record if the Court would like, because we attached  
5 two to the response, we attached -- we identified an  
6 additional one of the 1293 one, and then we didn't  
7 include that in our response we have in here that we  
8 gave to the Court, so.

9 THE COURT: Very well.

10 MR. TULANTE: So that's Exhibit C is  
11 the 1293. I'm going in the order in which Mr. Miller  
12 addressed them. The warrant in Magistrate No. 13-  
13 1293, that's the one ending in 581. That's Exhibit C  
14 that we have before the Judge.

15 The warrant in 1294, Magistrate No. 13-  
16 1294, the priority mail package ending in 391, that's  
17 Exhibit B. It was also Exhibit B to our response.  
18 And the one in 13-1285, the priority mail, the last  
19 three digits is 072, and that's Exhibit A.

20 THE COURT: Thank you.

21 MR. MILLER: And, Your Honor, if I may,  
22 I did also make some copies of those warrants and  
23 their affidavits, and other supporting documentation,  
24 postal data records, that type of thing. I would ask  
25 that that packet at this time be at least marked as

1 Defense Exhibit A, collectively.

2 THE COURT: Okay. Any objection?

3 MR. TULANTE: No objection, Your Honor.

4 THE COURT: Now which packet? That  
5 one?

6 MR. MILLER: No, not that one, that's  
7 the Assistant U.S. Attorney's.

8 THE COURT: All right. Thank you.

9 MR. MILLER: I apologize, Your Honor.

10 THE COURT: That's all right.

11 MR. MILLER: Mine are not marked and  
12 labeled as the Assistant District -- as the Government  
13 has marked them.

14 THE COURT: All right. So you wish --  
15 are you going to --

16 MR. TULANTE: Your Honor, just --

17 THE COURT: I'm sorry.

18 MR. TULANTE: I apologize, Your Honor.  
19 Just to clarify, we don't object to them being marked,  
20 but I don't know what Mr. Miller intends to do with  
21 them, we'd object to them being --

22 THE COURT: All right. We'll cross  
23 those bridges when we come to them --

24 MR. TULANTE: Okay.

25 THE COURT: -- but at this juncture, it



1 is being marked as Defense Exhibit?

2 MR. MILLER: A, yes, Your Honor.

3 THE COURT: Defendant A.

4 MR. MILLER: And to an extent, it  
5 duplicates what's already the common -- I'm sorry,  
6 that the Government has already presented and had  
7 marked.

8 THE COURT: Is the Government's  
9 corresponding Exhibit A, B and C or something else?

10 MR. MILLER: Yes. I think 391, 581 and  
11 when I'm speaking, when I'm giving those numbers,  
12 those are the numbers of the priority mail package,  
13 the last three digits of those packages. And that  
14 would be 581, 391 and 072.

15 I think that there's a duplication of  
16 the records in that regard and the exhibits.

17 THE COURT: Do you agree with that,  
18 Counsel?

19 MR. TULANTE: Yeah, Your Honor, I don't  
20 know, it seems like this is a mismatch of the report,  
21 there's excerpts from some of the -- some discovery,  
22 some of the tracking information, so I don't --

23 MR. MILLER: That's true.

24 MR. TULANTE: -- understand the purpose  
25 of that. What I was just simply trying to do is to

1 make it very clear on the record that the -- for each  
2 search -- for each warrant he's challenging, I've  
3 provided in each exhibit a copy of the application for  
4 a search warrant, the search warrant itself, and the  
5 affidavit, just so there's the -- the Court and  
6 defense and the Government were all on the same page  
7 with respect to what's at issue.

8 THE COURT: All right. Then the Court  
9 will allow counsel to mark these as Defense Exhibit A  
10 without any further notation, because they are  
11 somewhat different.

12 MR. MILLER: They are somewhat  
13 different, Your Honor, that's correct.

14 THE COURT: All right.

15 All right. Government, you may  
16 proceed.

17 MR. TULANTE: Yes, Your Honor. I -- in  
18 the suppression motion, the defendant challenges each  
19 affidavit, each search warrant on the basis that they  
20 lack probable cause. And with respect to going  
21 forward today, we submit that on the papers this Court  
22 can look at the four corners of the affidavit, and  
23 identify that there is probable cause. And in any  
24 event, even failing that, this Court can uphold the  
25 search warrants, on the basis of United States v Leon,

1 because the inspector here, he relied on them in good  
2 faith.

3 We will, though, put in some evidence  
4 on two of the warrants specifically the ones 1293 and  
5 1294 because the defense argues that they were  
6 invalidly issued, because they were not signed by the  
7 Magistrate Judge, Judge Caracappa. We -- as we said  
8 in our response, believe under Rule 4.1 that we  
9 proceeded properly, that the Court -- that Judge  
10 Caracappa directed the Government to sign them, and  
11 actually affirmed that the next day.

12 So we want to put -- there obviously  
13 needs to be evidence with respect to that, and we want  
14 to put -- present evidence from Inspector McStravick  
15 solely on that issue, Your Honor. We believe that  
16 this Court, as it has in the past, can determine the  
17 motion to suppress with respect to lack of probable  
18 cause on the basis of what's already presented in the  
19 affidavit, given that there's a dog, given that the  
20 inspector testified based on his training and  
21 experience put forth in the affidavit that the address  
22 for each package does not match, the addressee.

23 And so on that basis, Your Honor, we'll  
24 rest on our paper, and then go forward simply on the  
25 issue of whether or not the warrants, those two

1 warrants were validly issued.

2 Your Honor, I would move to call  
3 Inspector McStravick unless --

4 THE COURT: You may proceed.

5 MR. TULANTE: All right.

6 THE COURT: Counsel, is there a motion  
7 for sequestration? Are there any other witnesses in  
8 this case that need to be sequestered?

9 MR. MILLER: Yes, Your Honor. I would  
10 ask that Mr. Katerman exit at this time, and he may be  
11 called as a witness, and I believe that's the only  
12 witness.

13 MR. TULANTE: And, Your Honor, we would  
14 --

15 MR. MILLER: I'm sorry. But we do have  
16 -- I did subpoena another witness, and I'm thinking  
17 for some reason, I'm a little confused here, Judge, I  
18 messed up, Ms. (indiscernible) Kelly?

19 UNIDENTIFIED: Kellehearn (ph).

20 MR. MILLER: Right. I did have her  
21 subpoenaed and she may have to testify. She was  
22 actually the one -- the handler of the canine  
23 involved, and I would ask that she be sequestered at  
24 this time also.

25 THE COURT: All right. There's an

1 outstanding Government motion opposing that witness;  
2 is that correct?

3 MR. TULANTE: That's correct, Your  
4 Honor. We believe that there's no -- he's not  
5 established --

6 THE COURT: We'll litigate that after  
7 this witness testifies.

8 MR. TULANTE: We don't object to the  
9 sequestration for the moment.

10 THE COURT: Very well, thank you.  
11 Madame, will you please exit the courtroom?

12 Thank you.

13 THE CLERK: Good morning. Would you  
14 spell your name and (indiscernible).

15 MR. MCSTRAVICK: Sean McStravick, S-e-  
16 a-n, M-c-S-t-r-a-v-i-c-k.

17 THE CLERK: Okay. And you are?

18 MR. MCSTRAVICK: U.S. Postal Inspector.

19 THE CLERK: (indiscernible)

20 MR. MCSTRAVICK: 6576.

21 THE CLERK: Thank you.

22 MR. MCSTRAVICK: You're welcome.

23 THE CLERK: Would you raise your right  
24 hand?

25 SEAN MCSTRAVICK, WITNESS, SWORN

1 THE CLERK: Thank you. You may be  
2 seated.

3 THE WITNESS: Thank you.

4 THE COURT: You may proceed.

5 MR. TULANTE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. TULANTE:

8 Q. Good morning, Inspector.

9 A. Good morning.

10 Q. And where do you work?

11 A. United States Postal Inspection Service.

12 Q. And how long have you been there?

13 A. Since April 2012.

14 Q. And were you involved in the investigation  
15 of Jamahl Simmons?

16 A. Yes, I was. I was the lead case agent.

17 Q. Explain to the Court generally what you did.

18 A. Information was developed into Mr. Simmons'  
19 mailing parcels which contained narcotics from  
20 California to the Philadelphia region.

21 Q. As part of your investigation, did you seize  
22 and search any parcels delivered through the U.S.  
23 mail?

24 A. Yes, I did.

25 Q. And explain to the Court when's the first

1 time you did that.

2 A. The first one I did -- the first one was  
3 identified on November 12th.

4 Q. And what happened on November 12th?

5 A. On November 12th, we identified a parcel. I  
6 prepared a federal search warrant, application,  
7 affidavit, and actual search warrant. I prepared -- I  
8 sent it to the U.S. Attorney's office to your  
9 attention to receive the approvals.

10 MR. TULANTE: And, Your Honor, we have  
11 Exhibit A, which I've provided to the Court  
12 previously.

13 Q. Do you have it in front of you, Inspector  
14 McStravick --

15 A. Yes, I do.

16 Q. -- Government Exhibit A? That's  
17 Government's Exhibit A.

18 Do you recognize Exhibit A?

19 A. Yes, I do.

20 Q. And what is that?

21 A. Exhibit A is my application and affidavit  
22 for a search warrant, as well as an affidavit.

23 MR. TULANTE: And, Your Honor, we move  
24 for the admission of Government Exhibit A, which for  
25 the record is application and affidavit of search

1 warrant, and the search warrant itself in Case No. 13-  
2 1285-M.

3 THE COURT: Any objection?

4 MR. MILLER: No objection, Your Honor.

5 THE COURT: Admitted.

6 (Government's Exhibit A received)

7 BY MR. TULANTE:

8 Q. And when you obtained -- did you obtain a  
9 search warrant?

10 A. Yes, I did.

11 Q. And how did you do that? Just explain that  
12 briefly.

13 A. On this particular search warrant, I went  
14 before U.S. Magistrate Judge Caracappa, and swore out  
15 the search warrant.

16 Q. And did you execute that search warrant?

17 A. Yes, I did.

18 Q. What, if anything, did you find when you  
19 executed it?

20 A. Upon executing this search warrant, 2  
21 kilograms of cocaine were discovered inside the  
22 parcel, approximately 2 kilograms.

23 Q. And did you take any additional  
24 investigative steps after finding the cocaine?

25 A. Yes, I did. After finding the cocaine, we



1 then applied for a beeper, GPS, as well as an  
2 anticipatory search warrant for the Blue LLC address.

3 Q. For the package direct to the Blue LLC  
4 address?

5 A. Correct.

6 Q. And did you prepare an affidavit in support  
7 of that?

8 A. Yes, I did.

9 Q. And again explain briefly the steps you took  
10 to obtain the approval for a tracker warrant.

11 A. We -- I took the information from this  
12 particular warrant, as well as the narcotics that we  
13 discovered upon executing this warrant, drew up a new  
14 affidavit, which was sent over to the U.S. Attorney's  
15 office for approvals. The U.S. Attorney's office then  
16 reached out to Magistrate Judge Caracappa, who advised  
17 us that we would need to do this telephonically.

18 Q. And then, let's be clear, when you say U.S.  
19 Attorney's office, you're not talking about some  
20 nominal thing, you're referring to me --

21 A. Yourself, sir, yes.

22 Q. And what happened after that, after you were  
23 advised by Judge Caracappa to proceed telephonically?

24 A. So for this particular warrant, AUSA  
25 Tulante, yourself and I were in the U.S. Attorney's

1 office where Judge Caracappa was on a conference call  
2 with yourself, myself, where she advised that she had  
3 read and approved of the warrant.

4 She indicated on the conference call that  
5 she directed you to mark the date and the time that  
6 evening that she approved of that warrant.

7 Q. And just to be clear, we're talking about  
8 the tracker warrant, right?

9 A. Tracker warrant, correct.

10 Q. Okay.

11 A. Not the exhibit that's in front of me.

12 Q. Okay. So let's move to the next day, what  
13 happened on November 13th, 2013?

14 A. Well, on that day she actually had told us  
15 on the telephone call before we hung up, she had  
16 advised us that we were to come to her chambers the  
17 next morning so that she could physically see me again  
18 and swear it out, as I did previously on the 12th  
19 earlier in that day.

20 So on the 13th, we went to her chambers, we  
21 signed out the warrant, ultimately controlled delivery  
22 was conducted, and Kenneth Griffin was taken into  
23 custody.

24 Q. Did -- during the time you were working on  
25 the box to Blue LLC, did you identify any additional

1 boxes that were suspicious?

2 MR. MILLER: Objection, leading.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, two additional boxes  
5 were identified.

6 BY MR. TULANTE:

7 Q. Explain to the Court what happened.

8 A. The two additional boxes were identified,  
9 they were intercepted at the inner mail facility at  
10 the Philadelphia International Airport. They were --  
11 while they were in transit, and I identified them, I  
12 contacted yourself, the U.S. Attorney's office, and  
13 began to prepare the affidavit for a search warrant  
14 for both of those boxes.

15 The game plan was, the affidavit would be  
16 prepared, and would be on standby for when I presented  
17 these boxes to Detective Kelliher for a canine hit.  
18 If the dog did not indicate, then we would not be  
19 applying for a search warrant.

20 Q. And did you learn whether the magistrate  
21 judge approved of that plan?

22 A. Yes. The magistrate judge approved of that  
23 plan, and requested yourself e-mail all the documents  
24 to her, and instructed you to contact her if we were  
25 going to proceed with the warrant after a canine had

1 indicated on the boxes, if such that would be  
2 required.

3 Q. Let me show you -- you should have in front  
4 of you what's been marked as Exhibit D.

5 A. Yes, sir.

6 MR. TULANTE: Defense counsel?

7 MR. MILLER: Yes. You said B?

8 MR. TULANTE: D, D as in David.

9 MR. MILLER: I only have but three, A,  
10 B and C. Okay. Yes.

11 MR. TULANTE: Your Honor, this is  
12 Exhibit D, for the record is an e-mail from myself to  
13 Judge Caracappa with her e-mail address redacted.

14 BY MR. TULANTE:

15 Q. And have you seen Exhibit D before?

16 A. Yes, I have, sir.

17 Q. And is this consistent with the plan that  
18 was -- you just -- you described earlier, the game  
19 plan?

20 A. This is consistent, and the time indicates  
21 at the time we had discussed transmitting these  
22 warrants to Magistrate Judge Caracappa electronically.

23 Q. And have you reviewed that -- you see  
24 Exhibit D is a transmittal e-mail with attachments to  
25 it. Have you compared the attachments to what you

1 ultimately executed?

2 A. Correct.

3 Q. And are they identical?

4 A. They're identical.

5 Q. So let's proceed. What -- did the boxes,  
6 the two boxes ever arrive at the -- in Philadelphia?

7 A. Yes, they did.

8 Q. And what happened when they did?

9 A. Upon the boxes arriving in Philadelphia,  
10 they were presented to Detective Kelliher and Canine  
11 Kirby. Canine Kirby ultimately alerted Detective  
12 Kelliher, who advised me that the canine indicated to  
13 the presence of the odor of narcotics within those  
14 boxes.

15 Upon Detective Kelliher advising me that  
16 Kirby had positively hit on the boxes, I contacted  
17 yourself to let you know that we could proceed with  
18 the plan, to contact Magistrate Judge Caracappa in  
19 order to proceed with the search warrants.

20 Q. And when you contacted me, what happened at  
21 that time?

22 A. Essentially I contacted, you had contacted  
23 me right back, and said you had spoke to the --

24 Q. We're talking about contact, I'm sorry to  
25 cut you off. Telephonically?

1           A.     Telephonically.

2           Q.     Telephonically.

3           A.     I called telephonically, you advised me to  
4     standby I believe, at which time you contacted Judge  
5     Caracappa --

6                     MR. MILLER:  Objection.

7                     THE COURT:  Basis?

8                     MR. MILLER:  Hearsay.  I know it's  
9     admissible, but he's testifying about what Mr. Tulante  
10    did, and he wasn't there.

11                    MR. TULANTE:  Well, he was there.  He  
12    said he --

13                    MR. MILLER:  No, he said he contacted  
14    you telephonically I thought.

15                    THE COURT:  Just a moment, please.  The  
16    witness did testify that he did this telephonically,  
17    correct?

18                    MR. TULANTE:  That's correct, Your  
19    Honor.

20                    THE COURT:  And now he purports to  
21    testify as to what you were doing, or you did while he  
22    was on the other end of the phone?

23                    MR. TULANTE:  No, Your Honor, what he's  
24    -- I can rephrase it.

25                    THE COURT:  Go ahead.

1 BY MR. TULANTE:

2 Q. So when you called, what happened next as  
3 far as your involvement?

4 A. I contacted you. You advised me -- you  
5 placed me on hold. The next thing that happened was  
6 your voice was back on the phone, as well as Your  
7 Honor, Judge Caracappa's voice.

8 Q. Okay. And then what did Judge Caracappa --  
9 and just to be clear for the record, at this point,  
10 who's on the phone?

11 A. At this point, I'm on the phone, yourself,  
12 Sozi Tulante, U.S. Magistrate Judge Caracappa are all  
13 on a three-way conference call.

14 Q. And what did Judge Caracappa say to you?

15 A. I recall Judge Caracappa advising me that  
16 she remembered me from being in her chambers. She had  
17 read and approved of the warrants, and she advised you  
18 to indicate today's date, and I believe it was 9:20  
19 p.m. as the time that she telephonically approved the  
20 two search warrants.

21 Q. And what did you understand that to mean?

22 A. I understood that to mean that she approved  
23 the search warrants. She swore me in and approved my  
24 warrant -- approved my submission for a warrant.

25 Q. And what happened next with respect to the

1 search warrants?

2 A. Again she advised us to follow the same  
3 procedure we followed earlier in that day, to come  
4 back to her chambers the following day where she would  
5 actually ink her name on the documents.

6 Upon hanging up the phone, the two search  
7 warrants were executed. Contained inside the box that  
8 was addressed to Maximillian Settlements was  
9 approximately 2 kilograms of cocaine, and inside the  
10 box that was addressed to Jackson Law Group (ph) was  
11 approximately 1 kilogram of cocaine.

12 Q. And what did you do the next day, and this  
13 is November 14th, 2013?

14 A. On November 14th, we again applied for an  
15 anticipatory search warrant, a GPS and beeper device  
16 for Maximillian Settlements, we did not apply for an  
17 anticipatory search warrant for Jackson Law Group. We  
18 went before Judge Caracappa where she signed the  
19 previous night's warrants, she had me sign as the  
20 affiant, and she signed her name, anywhere I signed,  
21 she also signed.

22 Q. I think it'll make it easier if I actually  
23 show you the exhibits. I have Exhibit B and Exhibit C  
24 before you.

25 A. Yes, sir.



1 MR. TULANTE: For the record, Exhibit B  
2 is an application for a search warrant, the search  
3 warrant, and affidavit in Case No. 13-1294, respect to  
4 priority mail, a box with the last three digits of  
5 391.

6 And Exhibit C is application, affidavit  
7 -- application for a search warrant, affidavit and the  
8 search warrant itself in Case No. 13-1293-M, reference  
9 to a priority mail box with the last three digits of  
10 581.

11 Counsel, do you have a copy?

12 MR. MILLER: Yes.

13 MR. TULANTE: Your Honor, I move for  
14 their admission.

15 THE COURT: Any objection?

16 MR. MILLER: No objection, Your Honor.

17 THE COURT: Admitted.

18 (Government's Exhibits B and C received)

19 BY MR. TULANTE:

20 Q. And let's look at Exhibit B first,  
21 Inspector. Do you see the first page?

22 A. Yes, I do, application and affidavit for  
23 search warrant.

24 Q. And where is your signature on this page?

25 A. My signature is on the lower right-hand

1 side, on top of the affiant, Sean McStravick, Postal  
2 Inspector.

3 Q. And when did you sign that?

4 A. I signed this on the next day, which was the  
5 14th.

6 Q. And at the time you signed it, let's say  
7 below your signature at the very bottom, can you read  
8 what that says?

9 A. That says "11/13, 2013 at 9:20 p.m.,  
10 telephone auth" -- authorization maybe, I believe  
11 that's your signature.

12 Q. Okay. And --

13 MR. MILLER: That's Exhibit B, am I  
14 correct, I'm sorry?

15 MR. TULANTE: That is Exhibit B, yes.

16 MR. MILLER: I'm sorry, I'm sorry.

17 Q. And when did the Judge sign that?

18 A. The Judge signed it on the 14th.

19 Q. Okay. And do you see her signature?

20 A. I do.

21 Q. And I ask you the same thing with Exhibit A  
22 -- I'm sorry, Exhibit C.

23 MR. MILLER: Excuse me, Your Honor, I  
24 don't see the signature that you're talking about.

25 You're talking about at the bottom of the first page

1 of B? Oh, okay, I'm sorry, go ahead, uh-huh.

2 BY MR. TULANTE:

3 Q. And is that the same thing on -- just so we  
4 can move this along, the same thing on Exhibit C?

5 A. Exhibit C is a mirror of Exhibit B, my  
6 signature is on the lower right-hand side, Judge  
7 Caracappa's signature is on the lower left-hand side.  
8 And the date again was as directed on the phone,  
9 11/13, 2013, 9:20 p.m., telephone something, Sozi  
10 Tulante.

11 Q. And let's turn to the second page of both  
12 exhibits, exhibit book -- Exhibit B and Exhibit C. Do  
13 they read the same thing in terms of the date and time  
14 and my signature?

15 A. That is correct, sir.

16 Q. And the difference, do you see the Judge's  
17 signature on one and not the other?

18 A. That's correct.

19 Q. Which is her signature on?

20 A. Her signature is on Exhibit C.

21 Q. But not on Exhibit B?

22 A. Correct.

23 Q. And finally, the last page of each exhibit,  
24 do you see your signature anywhere?

25 A. Yes, I do, again in the middle of the page

1 on the right-hand side.

2 Q. And what about the Judge's signature?

3 A. Her signature is above on both exhibits, the  
4 line that says 11/13, 2013 at 9:20 p.m., telephonic  
5 Sozi Tulante.

6 Q. All right. And so once you met with the  
7 Judge, what did you do with the documents?

8 A. We filed the originals with the court  
9 clerk's office.

10 MR. TULANTE: Your Honor, I have no  
11 further questions for this witness.

12 THE COURT: All right. You may cross-  
13 examine.

14 MR. MILLER: Thank you, Your Honor.  
15 Your Honor, is it okay if I stand up at  
16 the table?

17 THE COURT: Sure.

18 MR. MILLER: Thank you.

19 CROSS-EXAMINATION

20 BY MR. MILLER:

21 Q. Mr. McStravick --

22 A. Yes, sir.

23 Q. -- did I say that correctly?

24 Okay. Thank you. I think it's maybe good  
25 afternoon right now or close thereof.

1           Sir, you referred to I think it was the  
2 Government's Exhibit B, and the first page of that  
3 exhibit, do you have it in front of you?

4           A.    Yes, sir, I do.

5           Q.    Okay, good. And the first page of that  
6 exhibit is merely the application and affidavit. It's  
7 marked application and affidavit and the search  
8 warrant; am I correct?

9           A.    Yes, sir.

10          Q.    Okay. Okay. And let me make this be clear,  
11 did you say that you were told that on I believe it  
12 was November the 13th to -- by the Judge and  
13 telephonically to go ahead and indicate that these  
14 were to be signed or signed or approved as of 9:20  
15 p.m. on November 13th; am I correct?

16          A.    Correct. The Judge instructed the AUSA to  
17 mark the date and time.

18          Q.    Okay. And then you went back you said, you  
19 went back the next day to the Judge's chambers. What  
20 happened?

21          A.    Per her instruction, she asked us to come  
22 back where she would then sign her name to the  
23 documents, it was her request that we come back the  
24 next morning.

25          Q.    And that's what you did, right?

1 A. Yes, sir.

2 Q. Well, I'm just a little confused here  
3 because when I look at, you know, the search warrant  
4 which is the second page of Government Exhibit B, I  
5 don't see the judge's signature on the search warrant  
6 itself. Am I correct?

7 A. Yes, sir.

8 Q. Okay. So when you -- I think you stated  
9 that the search warrant was signed the next day.

10 A. The search warrant was approved on the 13th.

11 Q. Right. And that you went back on the next  
12 day and the search warrant was signed; am I correct?

13 A. She asked us to come back so she could sign  
14 her name, so correct.

15 Q. And then you said that that's what happened,  
16 am I correct, that she signed the documents at that  
17 time, without any exclusion; am I correct?

18 A. That's correct, sir.

19 Q. But there is an exclusion, because she did  
20 not sign the second page, the actual search warrant,  
21 or the second page of Exhibit B of the Government's  
22 Exhibit B; am I correct?

23 A. You're correct.

24 Q. Okay. Okay. So would you agree that there  
25 is no signed search warrant in regards to the parcel

1 that is -- ends in 391, which would be Exhibit B or  
2 Case No. 13 -- search warrant for Case No. 13-1294-M?

3 A. I disagree in that. I was on the telephone  
4 with Your Honor at 9:20 --

5 THE COURT: In this instance, Her  
6 Honor.

7 THE WITNESS: Her Honor, I apologize,  
8 Your Honor. I disagree in that she advised me the  
9 warrant was approved on this date at 9:20 p.m., and  
10 instructed AUSA Tulante to actually write that on the  
11 search warrant as her approval.

12 BY MR. MILLER:

13 Q. Right. But she did not sign it; am I  
14 correct?

15 A. That's correct.

16 Q. Okay. Okay. Okay. Okay. And let me just  
17 ask you this now. I believe this is Government  
18 Exhibit D. With regards to Exhibit B, okay -- right,  
19 right, but I'm just going to deal with B right now, on  
20 the first page of -- do you have it?

21 A. I'm sorry, what exhibit?

22 Q. D. D as in David, I apologize.

23 A. Yes, sir. The first --

24 Q. The very first page.

25 A. Okay.

1 Q. Let me see, I think that would be the next  
2 to the last sentence at the top in the first  
3 paragraph. Do you see that?

4 A. The next --

5 Q. It reads, "The packages are on planes in  
6 route to Philadelphia International Airport and are  
7 not expected to be presented to the drug detection dog  
8 until 9:30 p.m. tonight at the earliest." Do you see  
9 that?

10 A. Yes, sir.

11 Q. Okay. Okay. Now -- but now this was  
12 something that Mr. Tulante forwarded to the Judge at  
13 about 5:30 in the afternoon; am I right?

14 A. Yes, sir.

15 Q. Okay. Okay. Okay. And according to I  
16 believe it would be page one -- that would be page 4  
17 of Exhibit D, but it's marked at the bottom page 3.

18 Now, I'm directing your attention there  
19 because this affidavit indicates there, I believe it's  
20 marked paragraph 5. Do you see that?

21 A. I'm still trying to find where --

22 Q. Of Exhibit D, page 4.

23 A. On page 4 of Exhibit --

24 Q. D. It says at the bottom page 3. Exhibit D  
25 as in David. Which is the packet with the affidavit.



1 Take your time, take your time.

2 A. They were all -- I apologize, they were --

3 Q. No, that's okay, I understand, believe me.

4 A. I'm on page 4.

5 Q. Page 4 of Exhibit D, but it's actually at  
6 the bottom it's marked page 3. It's page 4 because  
7 the cover page would be considered page 1 I think.

8 A. Okay. I think I'm where you -- can you tell  
9 me the sentence you're speaking about please?

10 Q. Well, I'm just looking at that page, and I'm  
11 looking at the first sentence of paragraph 5, and it  
12 says that -- I'm referring to the sentence that says  
13 "On November 13, 2013 the subject parcel was exposed  
14 to a drug detective canine, Kirby," and I'll stop  
15 there.

16 Do you see that sentence?

17 A. Yes, sir, I do.

18 Q. Okay. And you stated that you prepared --  
19 you pre-prepared these affidavits, am I correct, in  
20 advance?

21 A. Yes, sir.

22 Q. Okay. And what time did you pre-prepare  
23 them?

24 A. It was some time before they were  
25 transmitted at 5:30, I'm not sure.

1 Q. Oh, it was before 5:30, before the -- on the  
2 front, on the first page of D, at the top it says 5:30  
3 p.m.

4 A. Yes. I'm not sure what time I prepared  
5 them. I would've -- they would've -- based on my  
6 training and experience, I know when I prepare an  
7 affidavit, it goes to the AUSA and then goes through  
8 level of approval. So I'm not sure what time I  
9 actually would've prepared this in order that it  
10 would've been transmitted to the Judge at 5:30. I'm  
11 not certain.

12 Q. Okay. But you -- all right, all right. But  
13 it was in advance of 5:30; am I correct?

14 A. Yes, that's correct.

15 Q. Okay. Okay. Okay. Okay.

16 Now, paragraph 6 states that "the subject  
17 parcel is located at the United States Postal  
18 Inspection Service Narcotics Office within the Eastern  
19 District of Pennsylvania." Do you see that?

20 A. That's correct, sir, yes.

21 Q. So let me just ask you point blank, at the  
22 time the Judge looked at this and read your affidavit,  
23 the parcel was not at your office; am I correct?

24 A. I'm not sure what time she read the warrants  
25 though.

1 Q. Okay. Well then, let's go to the warrant  
2 itself. The warrant itself, let's just start with  
3 391, I'm staying with B --

4 A. Okay.

5 Q. -- the warrant itself indicates 9:20; am I  
6 correct?

7 A. That's correct, sir.

8 Q. Okay. So at least by 9:20, would you agree  
9 that the warrant was signed, or not signed, but  
10 reviewed by the Judge, the warrant and its  
11 accompanying affidavit of probable cause that you  
12 prepared?

13 A. Yes.

14 Q. Okay. So that would be in advance of 9:20.  
15 Okay. Now, let me see, that's 391. That's 391, got  
16 it.

17 Now, you see the first -- the cover page  
18 though of D, am I correct?

19 A. Yes.

20 Q. And the cover page says, that the package is  
21 not expected to be in Philadelphia until 9:30; am I  
22 right?

23 A. That's correct, sir.

24 Q. But the affidavit that the Judge read  
25 indicates that Kirby had already, or the canine had

1 already been exposed to the package; am I right?

2 A. Yes, sir.

3 Q. So, in essence, just correct me if I'm  
4 wrong, the package is not expected to get there until  
5 9:30 at the earliest, but 9:20, the Judge has already  
6 reviewed the affidavit, and approved it, in advance of  
7 the package even getting there for Kirby to even be  
8 exposed to the package?

9 A. The 9:20 time -- the 9:30 time was merely --  
10 I believe it was a discussion with the Judge as to  
11 approximately the latest time that she could expect us  
12 to be contacting her. The 9:30 time that was  
13 transmitted to her was in anticipation of about the  
14 latest time we would be contacting her was 9:30, as we  
15 were expecting the parcel to come in before 9:30, and  
16 we would be contacting her prior to that.

17 She was asking us how late we would be  
18 calling her, if I recall the actual conversation --

19 Q. Okay. But --

20 A. -- and we had said basically no later than  
21 9:30, we would've already had the parcel in our  
22 possession and either had indicated a positive hit, or  
23 we would be calling her and saying the warrants were  
24 not going to be requested.

25 Q. Okay. But none of that is not in the

1 warrant. I mean, this says plainly on Exhibit D, let  
2 me make sure I'm reading this correctly, it says, "The  
3 packages are on planes," this is at 5:30 in the  
4 afternoon on the 13th, "The packages are on planes in  
5 route to Philadelphia International Airport, and  
6 they're not expected to be presented to the drug  
7 detective dog until 9:30 p.m. tonight at the  
8 earliest." It has nothing -- it says nothing about  
9 the Judge being available or anything like that; am I  
10 correct?

11 A. You're correct, yes.

12 Q. Oh, okay. Do you have anything in writing,  
13 or do you have any -- did you have any notes in  
14 regards to the telephonic communication or any e-mails  
15 where the Judge said that she would only be available  
16 up till 9:30 or something like that?

17 A. No, Your Honor -- no. Your Honor, did not  
18 give me --

19 Q. Not me, please, no, no, no, no, I'm here,  
20 sir. Okay. Okay. All right.

21 And also in number 6 you state "the package  
22 is --" that's on page 4 of the exhibit, but page 3,  
23 it's more at page 3, it's paragraph number 6, it's one  
24 sentence, "The subject parcel is presently located at  
25 the United States Postal Inspection Service Narcotics

1 Office within the Eastern District of Pennsylvania."  
2 You -- when she read this in advance of 9:20, based on  
3 the time that's indicated on the face of the search  
4 warrant, on the face of the application for the search  
5 warrant, when she read this in advance or at least by  
6 9:20, the package hadn't even gotten to Philadelphia;  
7 am I correct?

8 A. Again, I'm not sure what time she read the  
9 -- I'm not sure what time she actually read the  
10 affidavit. The box arrived sometime before 9:20.

11 Q. Okay.

12 A. I'm not sure when Your Honor -- Her Honor  
13 had read this.

14 Q. All right. So if the box got there let's  
15 say at 9:20, 8:20 -- at 8:20, 7:20, but the package is  
16 not expected to be in Philadelphia until no earlier  
17 than 9:30; am I correct, sir?

18 A. I think that was -- it's just -- it was a  
19 point of reference for Judge Caracappa. She had asked  
20 for it. She fully understood the -- I guess maybe --

21 Q. Well, now hold on.

22 MR. TULANTE: Objection.

23 Q. I don't know if you can --

24 THE COURT: Sustained. Sustained.

25 BY MR. MILLER:

1 Q. Let's go to package number --

2 MR. MILLER: One second, Your Honor.

3 Q. Let me just ask you this. At the time that  
4 you submitted the package, at the time -- I'm sorry,  
5 I'm sorry. At the time you submitted the affidavit,  
6 was the package already at your office?

7 A. No, sir, and that was communicated to Your  
8 Honor -- to Her Honor, my apologies again.

9 Q. Okay. Well, it says it, though. It says it  
10 right here on number 6, "the subject package or parcel  
11 is presently located at the United States Postal  
12 Inspection Service Office within the Eastern District  
13 of Pennsylvania." Do you see that?

14 A. Yes, sir.

15 Q. Okay. So when you let her see this, it  
16 wasn't true that the package was there, because the  
17 package didn't get there at least at the earliest  
18 according to your first page here, 9:30; am I correct?

19 A. Sir, I believe the package arrived somewhere  
20 after 7:30. It would've had to have been driven from  
21 the air mail facility to my office, and then I  
22 would've contacted the AUSA and advised him the  
23 package was here, at which time he was to communicate  
24 to Judge Caracappa that that warrant was ready for her  
25 review. That may be where it's -- the disconnect.

1           She was only to have these in advance, we  
2    would contact her and advise her they were here, once  
3    the parcel arrived, we were to contact her and advise  
4    her, it was here.

5           Q.    So what you're saying is basically that this  
6    sentence here on the cover of Exhibit D, is basically  
7    -- I hate to say like this, a lie. That the package  
8    was already here in Philadelphia, at 7:30, but it's  
9    indicated here in Mr. Tulante's correspondence, that  
10   the doggoned package would not get to Philadelphia  
11   International Airport, is not expected to be presented  
12   to a drug detection dog till 9:30, that would be a  
13   lie; am I correct? That's a material misstatement of  
14   the facts in this case, isn't it?

15          A.    We were providing an estimate to Judge  
16   Caracappa as to when she would be hearing back from  
17   us.

18          Q.    Doesn't -- is the word estimate anywhere on  
19   the front page of Exhibit D?

20               MR. TULANTE: Your Honor, objection. I  
21   think we've covered this quite extensively.

22               THE COURT: Sustained.

23               MR. MILLER: Okay. Okay. I just want  
24   to be clear. All right, fine.

25   BY MR. MILLER:



1 Q. Let me go to parcel number 381, ending in  
2 number 381, which will be the second parcel.

3 A. Sir, could you give me the exhibit number?

4 Q. I'm sorry, that would be your -- I said 381,  
5 it's 391, that would be Government Exhibit B.

6 A. I have it, sir, thank you.

7 Q. Let me make sure I'm clear here. Let me ask  
8 you like this, you said there were two warrants that  
9 you presented to the Judge on -- that were handled  
10 telephonically on the 13th; am I correct?

11 A. Yes.

12 Q. Okay. Which one of the government's  
13 exhibits are you referring to that reflect the  
14 affidavits or the search warrants that were presented  
15 on -- to the judge telephonically on the 13th? Would  
16 it be B and C or what?

17 A. I telephonically swore out Government  
18 Exhibit B, and Government's Exhibit C.

19 Q. Okay. Okay.

20 A. During the same telephonic phone call.

21 Q. So that would be parcels ending in 391 and  
22 581; am I right?

23 A. Yes, sir.

24 Q. Okay. Okay. Now, I think we -- with  
25 regards to B, I think we're saying there's no search

1 -- there's no signature on B, am I correct, and we can  
2 go to C; am I right? We've already talked about  
3 Exhibit B; am I right?

4 A. Yes.

5 Q. Okay. And now we can go to Exhibit C; am I  
6 right? And that's the one ending -- the parcel ending  
7 in 581, Case No. 13-1293-M.

8 A. Yes, sir.

9 Q. Okay. Now, just one second here. That's  
10 581. Now, this parcel, Government Exhibit C, the one  
11 that's referred to in Government Exhibit C, ended in  
12 581. You say that parcel was also presented to the  
13 drug -- the canine for -- to determine whether or not  
14 it may have contained some type of -- something that  
15 would be prohibited, right?

16 A. I presented the parcel in front of Agent  
17 Kelliher for the suspicion of narcotics.

18 Q. Now, let me ask you this question. Before  
19 you presented it to Detective Kelliher, was the  
20 package already -- what had you done with the package  
21 to determine that it should be presented to Detective  
22 Kelliher?

23 A. If I could refer to my affidavit?

24 Q. Sure.

25 A. And just so I don't misspeak, you're

1 speaking about Government's Exhibit C, correct?

2 Q. Yes, sir.

3 A. On this particular parcel, I had identified  
4 that the -- as you say, as I tell you in number 4, the  
5 delivery address of the subject parcel to law  
6 enforcement database accurate showed that the business  
7 name Maximillian Settlement was not associated to that  
8 delivery address.

9 Q. Okay.

10 A. And that address is actually Virtual Office  
11 Facility.

12 Q. All right. So -- go ahead, I'm sorry.

13 A. I can continue to say, based on my training  
14 and experience, I know that the use of a virtual  
15 office facility or some sort of mailing entity as a  
16 virtual office facility is used to mask the true  
17 identity of the individual who's supposed to receive  
18 the parcel.

19 Q. Okay. Now, you said that based on the  
20 database, was it Accurant (ph)?

21 A. Accurate, yes, sir.

22 Q. Accurate, okay.

23 Q. You said that the business name is not  
24 associated with the delivery address, right?

25 A. Yes, sir.

1 Q. I mean, I'm just curious but businesses move  
2 frequently, don't they?

3 A. Yes, I suppose.

4 Q. Okay. And they change their addresses  
5 frequently, right?

6 A. Again I suppose, yes.

7 Q. Okay. And you said it wasn't associated  
8 with that, well, let me just -- I mean -- okay. Okay.

9 You did some type of data computer search;  
10 am I correct?

11 A. Yes, sir.

12 Q. And that computer search indicated some  
13 parameters; am I right?

14 A. Yes.

15 Q. Okay. And those parameters had something to  
16 do with when the database that you were reviewing,  
17 when that database was last updated; am I correct?

18 A. I assume so. I don't know the -- you know,  
19 when they do updates, stuff like that. I'm not sure  
20 where they get their data from.

21 Q. Okay. Okay. Okay. So, in other words, you  
22 don't know that, then it could be that Maximillian was  
23 associated with that address at some time subsequent  
24 to Accurant was updated; am I right?

25 A. At the time I search Accurant, Maximillian

1 was not associated with that address.

2 Q. Right. But that's when you searched it, but  
3 when was Accurant last updated?

4 A. I couldn't tell you that, sir.

5 Q. In other words, how stale, how old, how  
6 ancient was the information in the database for  
7 Accurant to determine whether or not Maximillian  
8 really was a business at that address?

9 A. I can tell you that information is as  
10 current as 2012. It's normally a month or two off,  
11 where they kind of date and -- how do they do it, like  
12 date and time it, month and date it, it's usually like  
13 the previous month, a month prior to that.

14 Q. You say 2012, well, this is 2013, right?

15 A. Correction, 2013. Any particular year, it's  
16 usually about a month -- it can only tell you  
17 obviously up until the 30th of the previous month is  
18 my experience with that database.

19 Q. Okay. Well, what about on this particular  
20 occasion? Can you tell us what your experience was on  
21 this particular occasion in regards to the update of  
22 the data in that database when -- that you searched,  
23 to determine whether or not Maximillian was associated  
24 with that address?

25 A. Certainly. When I ran Maximillian

1 Settlements to that address, no records were found.

2 Q. That wasn't my question really. My question  
3 was, in essence, can you say specifically when the  
4 database was updated to determine whether or not  
5 Maximillian was associated with that address?

6 A. No.

7 Q. So in essence, sir, you can't tell us how  
8 accurate Accurant really was in regards to determining  
9 whether Maximillian was associated with that address;  
10 isn't that right?

11 A. I could tell you on the day that I searched  
12 it using that address as well as the name, the name  
13 did not associate to that address. I searched it both  
14 ways.

15 Q. Okay. Okay. Now, after you -- that was  
16 what you used, and you used that to identify this  
17 package as a suspect package; am I correct?

18 A. No. That's --

19 Q. Oh, you didn't do that?

20 A. Let me -- correct. That's one of the  
21 criteria. There's other criterias.

22 Q. Okay. What other criteria did you use  
23 before the package was presented to Officer Kelliher  
24 and her canine?

25 MR. TULANTE: Your Honor, may I object

1 to the line of questioning. I believe that the  
2 defense counsel is trying to identify -- he's trying  
3 to essentially do a Franks hearing here, and Mr. --  
4 Inspector McStravick is testifying solely to provide  
5 the Court the context and the timeline through which  
6 the Government obtained these warrants; in other  
7 words, whether or not they're signed or unsigned.

8 So I understand, you know, he was  
9 asking about Accurant. My concern, your Honor, he's  
10 going to go paragraph-by-paragraph and really try to  
11 attack the affidavit without identifying any basis for  
12 any material omissions or --

13 THE COURT: Sustained.

14 BY MR. MILLER:

15 Q. Officer, what time was Officer Kelliher --  
16 what time did Officer Kelliher actually, along with  
17 her canine, exposed to the package, that's indicated  
18 in Government Exhibit C?

19 A. Sometime before 9:20, I'd say approximately  
20 8:30 maybe, probably about 8:30.

21 Q. You don't know?

22 A. I do not know, sir.

23 Q. Did you make any notes?

24 A. I do not know, sir.

25 Q. I'm sorry?

1 A. No, I did not.

2 Q. You do not or you did not?

3 A. I did not, and I do not.

4 Q. Okay. Do you know whether or not the  
5 Detective Kelliher made any notation as to the time  
6 that she was exposed to the packages or to the package  
7 with her canine?

8 A. I do not.

9 Q. Were you present at the time that Officer --  
10 I'm sorry, Detective Kelliher presented -- was  
11 presented with the package that's referred to in  
12 Government Exhibit C?

13 A. Yes, I was.

14 Q. You were present, okay.

15 Now, where was that -- what was the  
16 location, by just office number, not necessarily  
17 street address, but what was the -- where was that?  
18 Was that at the airport, was it at your office or?

19 A. At our office, sir.

20 Q. I'm sure a log is kept (indiscernible).

21 Now, regarding the actual -- you were  
22 present, since you were present, did -- were you  
23 involved in setting up any display of packages for the  
24 dog, Kirby, which was Officer -- Detective Kelliher's  
25 partner, the dog, the canine, were you involved in



1 setting up the display?

2 A. I honestly don't recall.

3 Q. Was anybody else present besides you and  
4 Detective Kelliher?

5 A. Again, honestly I couldn't recall at this  
6 time.

7 Q. Okay. And this package that's referred to  
8 in C, is -- was at the same time package B, both were  
9 on the same plane, or were they on different planes?

10 A. Okay. So you're saying the package  
11 represented in Exhibit B as well as Exhibit C?

12 Q. That's correct.

13 A. Again, I'm not sure. Multiple planes come  
14 into the airport --

15 Q. Okay.

16 A. -- and it's delivered to the air  
17 (indiscernible) facility.

18 Q. Okay. You talked about Accurant, but let me  
19 ask you this, you are pretty much the person who is --  
20 was in charge of this investigation; am I correct?

21 A. Yes, sir, I was the case agent.

22 Q. Okay. And you're familiar with the postal  
23 tracking system used by your post office; am I  
24 correct?

25 A. Yes, sir, I am.

1           Q.    Let me just ask you this, can you tell us  
2   how that tracking system would work with a package,  
3   when a package arrives in Philadelphia, what happens,  
4   is it scanned or what?

5           A.    It depends on a multitude of factors. It  
6   depends on the induction, the location of the package  
7   into the area, not just Philadelphia, into any area,  
8   it depends on where the package is coming from, where  
9   it's going to. There's a multitude of ways the  
10  packages are inducted into the mail system here in  
11  Philadelphia.

12          Q.    Okay. Now, in regards to this particular  
13  package, I believe this is included in what would be  
14  Defense Exhibit C -- I'm sorry, Defense Exhibit A.  
15  Let me see, I don't know if it's within -- it's not in  
16  there.

17                   MR. MILLER: And yeah, do you have it?  
18  May I see it for a second and make sure?

19                   (Pause)

20                   MR. MILLER: Judge, I violated a rule  
21  for copying in your courtroom. I have one copy of  
22  documentation that I received from the Government, and  
23  I did not make a copy of it, Judge.

24                   THE COURT: Excuse me, 50 lashes.  
25  We're going to recess, Counsel. It is now 12:35. We

1 will reconvene at 1:35 promptly, and you'll get time  
2 to do that.

3 MR. MILLER: Thank you, Judge.

4 THE COURT: Thank you.

5 (Recessed at 12:35 p.m.; reconvened at 1:48 p.m.)

6 THE COURT: Counsel, procedurally, I  
7 understand that there is a second superseding  
8 indictment in this matter?

9 MR. MILLER: Yes, Your Honor, we have  
10 -- that was issued by Mr. Tulante, and I received it.  
11 I don't believe that at this point my client has been  
12 arraigned on it.

13 THE COURT: That's exactly where I'm  
14 going.

15 MR. MILLER: Yes, sir.

16 THE COURT: Exactly where I'm going.

17 MR. MILLER: Yes, sir.

18 THE COURT: We should do that at this  
19 time.

20 MR. MILLER: We can, yes, sir, whatever  
21 pleases the Court, Your Honor.

22 THE CLERK: I'm sorry, would you stand,  
23 please. Would you raise your right hand?

24 (Defendant sworn)

25 THE CLERK: Can I ask how would you

1 like to be (indiscernible)?

2 THE DEFENDANT: Secured party.

3 THE CLERK: Secured party before  
4 (indiscernible)?

5 THE DEFENDANT: Secured party as  
6 authorized agent for (indiscernible).

7 THE CLERK: For secured party  
8 (indiscernible)?

9 THE DEFENDANT: Yes.

10 THE CLERK: Secured party, you have  
11 been charged in the second superseding indictment  
12 charging you with Count I, conspiracy to distribute 5  
13 kilograms or more of cocaine in violation of 21 United  
14 States Code Section 846; Counts II and III, the  
15 attempted distribution of 500 grams or more of cocaine  
16 in violation of 21 United States Code Section 846;  
17 Count IV, possession of a firearm in furtherance of a  
18 drug trafficking crime in violation of 18 United  
19 States Code Section 924(c)(1); and Counts V and VI,  
20 possession of a firearm by a convicted felon, in  
21 violation of 18 United States Code Section 922(g)(1).

22 As to Count I, how do you plead guilty  
23 or not guilty?

24 THE DEFENDANT: Before I can enter a  
25 plea, I would like to get a clear understanding. Is

1 this a claim that's being placed against me?

2 THE COURT: Are you asking the deputy  
3 clerk or are you asking the Court?

4 THE DEFENDANT: Whoever has the answer,  
5 no disrespect, I just want to know, if this a claim  
6 that's being placed against me?

7 THE COURT: What do you mean by claim?

8 THE DEFENDANT: Is someone claiming  
9 that I harmed them?

10 THE COURT: This is an indictment.

11 THE DEFENDANT: Okay.

12 THE COURT: It is a charge lodged by  
13 the grand jury.

14 THE DEFENDANT: Well, could the Court  
15 please provide me with proof of authority?

16 THE COURT: I'm sitting here in a robe,  
17 that's the best I can do for you.

18 THE DEFENDANT: So there's no evidence  
19 of authority (indiscernible) you're sitting here  
20 (indiscernible)?

21 THE COURT: For here, for now, yes,  
22 sir.

23 THE DEFENDANT: Well, I will not be  
24 able to make a decision (indiscernible) broken any  
25 laws under that authority.

1                   THE COURT: Very well. The Court will  
2 enter a plea of not guilty on the secured party's  
3 behalf. You may be seated. Let's go forward. Thank  
4 you.

5                   THE DEFENDANT: Just for the record,  
6 please, I just want to object to you practicing law  
7 from the bench.

8                   THE COURT: The objection's noted,  
9 thank you.

10                  Where were we, Counsel?

11                  MR. MILLER: Yes, Your Honor. I  
12 believe we -- I was cross-examining the witness at  
13 this time.

14                  THE COURT: You may continue.

15                  MR. MILLER: Thank you, Your Honor.  
16 Before I proceed, though, I would ask the Court to --  
17 I presented some documents to your staff, Ms. Chavez  
18 (ph) regarding a package -- a parcel number rather  
19 that ends in 581. That parcel -- that complete parcel  
20 number is --

21                  MR. TULANTE: Your Honor, we stipulate  
22 to whatever the number, I want to save Mr. Miller the  
23 trouble.

24                  MR. MILLER: (indiscernible)

25                  THE COURT: Is this the one Ms.

1 Elchubach (ph) just handed me?

2 MR. MILLER: That's -- yes, sir, I  
3 believe it is. Yes, I just gave it to her --

4 THE COURT: All right.

5 MR. MILLER: -- yes, sir, Your Honor.

6 THE COURT: Now, it needs to be marked,  
7 and we'll keep --

8 MR. MILLER: Yes, Your Honor, and I've  
9 spoken with the Assistant District Attorney and he had  
10 no --

11 THE COURT: Assistant United States  
12 Attorney.

13 MR. MILLER: Oh, forgive me, Judge.

14 THE COURT: Several blocks away, but --

15 MR. MILLER: Judge, I was down there  
16 this morning. I was down there this morning.

17 THE COURT: I take offense.

18 MR. MILLER: In front of Judge Jiminez.

19 THE COURT: Not a problem.

20 MR. MILLER: I apologize, I apologize.

21 THE COURT: That's all right.

22 MR. MILLER: But I have -- spoke with  
23 Assistant U.S. Attorney Mr. Tulante regarding the  
24 titling of this document for -- just for marking it  
25 for identification purposes, and that would be

1 addendum to or the addendum to Exhibit A, Defense  
2 Exhibit A.

3 THE COURT: All right. Just a moment,  
4 please.

5 MR. MILLER: Yes, sir.

6 THE COURT: So marked.

7 MR. MILLER: Thank you. May I proceed,  
8 Your Honor?

9 THE COURT: Yes, sir.

10 MR. MILLER: Thank you, sir. Your  
11 Honor, is it all right if I sit down?

12 THE COURT: Surely.

13 MR. MILLER: Thank you, sir. And I  
14 apologize for being seated earlier, Judge, I believe I  
15 was supposed to ask the Court permission to be seated.  
16 I believe I read that in your rules.

17 THE COURT: Accepted and thank you very  
18 much, you may be seated.

19 MR. MILLER: Thank you, sir, I meant no  
20 disrespect, sir.

21 THE COURT: Not a problem. Thank you  
22 very much.

23 MR. MILLER: Thank you, sir.

24 BY MR. MILLER:

25 Q. It's McStravick; am I correct, sir?



1 A. McStravick, correct, sir.

2 Q. All right. Thank you, thank you. And  
3 again, good afternoon.

4 A. Good afternoon, sir.

5 Q. Mr. McStravick, you -- are you familiar with  
6 the postal tracking system, product tracking system?

7 A. Yes, sir, I am.

8 Q. Okay. What -- can you explain that system  
9 to me? I'm sorry --

10 MR. TULANTE: I don't believe the  
11 witness has a copy, Your Honor.

12 MR. MILLER: I'm sorry. And, Judge, I  
13 have an extra copy. I have extra copies.

14 THE COURT: Very well.

15 MR. MILLER: If I may approach your  
16 court staff.

17 THE COURT: Yes, sir.

18 MR. MILLER: Thank you. I did not mark  
19 it, Judge, it's just plain.

20 THE COURT: All right. It is addendum  
21 to Defense Exhibit A.

22 THE WITNESS: Thank you.

23 MR. MILLER: Yes. May I proceed, Your  
24 Honor?

25 THE COURT: Yes, sir.

1 MR. MILLER: Okay. Thank you.

2 BY MR. MILLER:

3 Q. Mr. McStravick, you say you're familiar with  
4 the postal product tracking system, correct?

5 A. Yes, sir, I am.

6 Q. Just tell me how does that system operate?

7 A. It's the tracking system the United States  
8 Post Office uses to track their mail or parcels, boxes  
9 that contain a tracking number.

10 Q. Okay. Now, you say in containers?

11 A. No, and that contain the trucking number.

12 Q. Oh, okay.

13 A. I apologize, I have a cold, sorry.

14 Q. No, no, it's all right. I believe I'm  
15 losing my hearing a little bit, too much hard rock  
16 music, I'm sorry.

17 But at any rate, okay, then you said it's  
18 the method that the post office uses to track various  
19 parcels or letters or pieces of mail; am I correct?

20 A. Yes, sir.

21 Q. Okay. Now, that system is -- is that a  
22 system something that's mechanically, or is it  
23 mechanized or that you use standards and stuff like  
24 that?

25 A. It's a database that standards are used on,

1 correct, sir.

2 Q. Okay. And then as packages arrive at  
3 various locations, they are scanned; am I correct?

4 A. Depending on the type of facility they're at  
5 they would be scanned.

6 Q. Okay.

7 A. Again, it's hinged upon the type of  
8 facility, where the package is.

9 Q. Okay. Here, Philadelphia International  
10 Airport, okay, are the packages scanned?

11 A. Not at the airport, no, sir.

12 Q. Where are they scanned?

13 A. Again, it depends on once they enter into  
14 Philadelphia from the airport, it depends on where  
15 they're then disbursed to. There's two different, at  
16 least two different central processing centers here in  
17 Philadelphia.

18 Q. Okay. So they're scanned at the processing  
19 center, right?

20 A. Yes.

21 Q. Okay. Okay. Now, those processing centers,  
22 exactly where they're located, are they located in the  
23 airport, are any located in the airport, or is it  
24 downtown or what?

25 A. Not at the air -- there's nothing at the

1 airport.

2 Q. Nothing at the -- (indiscernible) Street  
3 Station, there used to be -- no?

4 A. There's one on Lindberg Boulevard, and  
5 there's one up in the northeast.

6 Q. Okay. So that's where packages are scanned.

7 A. Correct.

8 Q. That come into Philadelphia.

9 A. Correct.

10 Q. Okay. And so they are -- if they come into  
11 the airport, they come into the airport and then they  
12 are driven to Lindberg Avenue or the northeast, am I  
13 correct, by -- they're driven there; am I correct?

14 A. Yes.

15 Q. By vehicle, right?

16 A. Yes.

17 Q. Okay. So in other words, what you're saying  
18 is, is that when something is taken off of a plane,  
19 there's nothing to indicate when that package is  
20 actually -- initially arrived here in Philadelphia.

21 A. That is correct, yes.

22 Q. That's correct?

23 A. Yes.

24 Q. And now when it is scanned, usually is the  
25 packet -- well, not when it's scanned, but prior to it

1 being scanned, how -- you say it's delivered by truck,  
2 but in this instance the packages that were basically  
3 identified as suspect, okay, were they identified as  
4 suspect -- where were they identified as suspect?

5 A. Once we actually had our hands on that  
6 parcel. Let me back up. We -- some parcels our  
7 system is able to capture an image, a different  
8 database of the actual label of the parcel itself.

9 On -- if we're referring to November 12th,  
10 images were captured of these labels, which I had very  
11 early in the day right after they were entered into  
12 the mail stream. So at that point in time, I had a  
13 picture of the label, at which time I could start  
14 using my investigative techniques.

15 Q. Okay. So now you're saying that pictures  
16 were taken of the label for the two packages that  
17 ended in I believe it's 581 and 391 parcels; am I  
18 correct?

19 A. If I recall, I believe, yes. I believe they  
20 hit a machine that has a -- photo capability.

21 Q. You believe, you're not sure.

22 A. I believe.

23 Q. So do you know or do you believe whether or  
24 not you looked at these pictures?

25 A. Okay. I looked at the pictures prior to

1     them arriving in Philadelphia.

2             Q.     Prior to them arriving in Philadelphia?

3             A.     Yes.

4             Q.     And when you say arriving in Philadelphia,  
5     you mean while they were in the air?

6                     MR. TULANTE: Your Honor, may I object.

7     I know Your Honor doesn't like speaking objections,  
8     but I'm concerned based on the line of questioning,  
9     given the limited purpose for which Inspector  
10    McStravick has been offered, that is to establish the  
11    timing and the procedure followed by the Government to  
12    get the warrant issued with respect to Judge Caracappa  
13    that I don't know where -- my concern is that defense  
14    is asking a lot of questions that run far afield of  
15    that and --

16                    THE COURT: Mr. Miller, can I ask for  
17    an offer of proof?

18                    MR. MILLER: Sure, Judge. Long and  
19    short, I'll get right directly to it. The postal  
20    tracking record that's indicated as part of the  
21    addendum to Defense Exhibit A indicates the time that  
22    the package arrived here in Philadelphia. And I'm not  
23    trying to make sure that I understand (sic), and maybe  
24    -- well, at least for my edification, and that make  
25    sure that the Court, and I'm not sure, but to make

1     sure, to make sure the Court understands this process.  
2     And I'm getting an education to an extent, but I  
3     ultimately do have some questions in regards to the  
4     material that's listed here in the addendum.

5                   THE COURT: All right. Overruled for  
6     now, you may proceed.

7                   MR. MILLER: Thank you.

8     BY MR. MILLER:

9           Q.     Now, sir, I'm just -- I'm curious. You were  
10    saying that the packages were initially arrived here  
11    in Philadelphia, but you saw the packages by way of a  
12    photograph before they arrived here in Philadelphia.

13          A.     Yes, sir.

14          Q.     And that was a picture of the package. Was  
15    that a picture of the package at its point of origin  
16    when it was put into the mail stream, or is that a  
17    picture of the package when the package was in the  
18    air, or at what point?

19          A.     I believe that image had been captured at a  
20    processing plant in Los Angeles, California.

21          Q.     At a processing plant, okay. And is that  
22    the label or the whole package?

23          A.     Just -- it's just the -- I mean, it  
24    obviously depends on the way the package is laying on  
25    the belt. At times it's just the label, at times it's

1 the label as well as -- it just depends on how the  
2 package falls on the belt.

3 Q. Okay. What did you see in this instance?

4 A. This was the label, the actual --

5 Q. Just the label?

6 A. I believe so. When I drew up my affidavit.

7 Q. So you say you believe so, so you don't  
8 really know what you looked at? I'm just trying to  
9 find out. Did you look at the label or the whole  
10 package? You don't know if you did that?

11 A. Honestly I recall, I had the tracking number  
12 available to me, I had the return address available to  
13 me, I had the dimensions of the parcel available to  
14 me, and I had the address here in Philadelphia  
15 available to me.

16 Q. Could you see if the package was flat, or  
17 whether it was rectangular, I mean, when I say  
18 rectangular, I mean not rectangular flat, but was a  
19 box like or could you tell whether it was flat, I  
20 mean, how could you -- how would you be able to tell  
21 that without seeing the whole, or could you tell?

22 A. (indiscernible).

23 Q. And just by looking at the label?

24 A. This indicates right on here it's a medium  
25 flat rate box, the documents you gave me.



1 Q. Okay. Okay. Okay. All right. Okay.

2 So you're depending on the accuracy of this  
3 document; am I correct? This document is accurate and  
4 correct, right? The information contained in it.

5 A. Correct.

6 Q. All right. Now, you said that the package  
7 was indicated as suspect at some point; am I correct?

8 A. That's correct.

9 Q. And when was that?

10 A. If I can backtrack to the prior day on  
11 November 12th, as we indicated we had identified and  
12 seized -- opened a parcel that contained 2 kilograms  
13 of cocaine. And while we were doing that, the other  
14 investigative steps to be taken, to determine if the  
15 method of payment for which that parcel -- which was  
16 used to pay for that parcel --

17 Q. Right.

18 A. -- was paying for any additional parcels.  
19 That revealed positive results, showing that the  
20 credit card -- that was used to purchase the package  
21 that was intercepted on November 12th. That credit  
22 card was also used at two additional post offices in  
23 California to ship mail from California to  
24 Philadelphia.

25 Based on that information, there's a review

1 of more postal databases that allow me to see what the  
2 tracking number is, allow me to find out if an image  
3 is available of the actual label, provides credit card  
4 information, label images, numerous -- there's  
5 numerous databases at my disposal during my  
6 investigation.

7 Q. I understand that. Okay. So but at what  
8 point was the package -- did you identify the package  
9 as being suspicious, the two packages as being --

10 A. I would say the first point was when I  
11 realized that a credit -- the same credit card was  
12 used -- the credit card that was used for a parcel  
13 which contained 2 kilograms of cocaine was also used  
14 for two additional parcels.

15 Based on my training and experience, that's  
16 automatically going to tell me that something could be  
17 suspicious with this parcel that the same credit card  
18 was used.

19 Next, I was able to obtain a picture of the  
20 label. Upon getting the picture of the label, as  
21 we've gone through in both of my affidavits, I was  
22 able to determine that Maximillian Settlements was not  
23 associated to that address, based on the check of  
24 Accurant, which is what began my entire investigative  
25 process.

1           Ultimately I also looked at the second  
2 parcel, which was addressed to Jackson Law Group at  
3 the 1640 Nixon Drive. 1640 Nixon Drive is a UPS  
4 store. That's basically a mail receiving agent. Once  
5 again, based on my training and experience, a UPS  
6 store, a CMRA, a virtual office, these are all  
7 establishments that narcotics traffickers use in order  
8 to --

9           THE COURT: And for the record, the  
10 acronym CMRA is?

11           THE WITNESS: Commercial Mail Receiving  
12 Agent, Your Honor.

13           THE COURT: Thank you. You may  
14 continue.

15           THE WITNESS: My apology.

16 BY MR. MILLER:

17           Q. Well, let me just ask you this. Okay. Was  
18 it on November 12th, November 13th, November 14th when  
19 the package was identified as suspicious?

20           A. We received those information on November  
21 13th, for these -- for Exhibits C and B on November  
22 13th when they entered the mail stream is when I  
23 identified them as being suspicious.

24           Q. Is there any reason why you're looking at  
25 the U.S. Assistant Attorney? Okay. I just want to

1 make sure, is there any reason why you're looking at  
2 him as you talk?

3 A. No.

4 Q. Okay. Okay. Okay. Now, let me just ask  
5 you, you said this was on the 13th when you made the  
6 identification.

7 A. For these two.

8 Q. Okay.

9 A. On the 12th, I had identified the first box  
10 obviously.

11 Q. Okay. Now, let me ask you this. You said  
12 you made these identifications?

13 A. Yes, correct.

14 Q. Okay. And you did it from your desk before  
15 the packages got here, or once the packages were --  
16 once you had the packages physically in your hand?

17 A. I'm able to do a lot of --

18 MR. TULANTE: Asked and answered --

19 THE COURT: Sustained.

20 MR. TULANTE: -- I think it's already  
21 been --

22 THE COURT: Sustained.

23 MR. MILLER: Okay. Okay. Okay.

24 BY MR. MILLER:

25 Q. Now, once you identified the packages as

1 suspect, then what did you do, if anything?

2 A. Okay. Once they're identified, I began  
3 preparing the affidavit, application for a search  
4 warrant.

5 Q. Okay. Now, so you prepared the affidavits,  
6 and you said you pre-prepared them prior to them being  
7 presented; am I correct?

8 A. That's correct, sir.

9 Q. Okay. Okay. And where did you make --  
10 where did you prepare these documents? At your  
11 office?

12 A. Correct.

13 Q. Okay. And that was on the 13th?

14 A. That's correct.

15 Q. Okay. And then after you prepared the  
16 documents, you presented them to who?

17 A. To the Assistant United States Attorney,  
18 Sozi Tulante.

19 Q. I see. And when did you do that?

20 A. Sometime in the afternoon of November 13th.

21 Q. Sometime in the afternoon.

22 A. I recall.

23 Q. You don't recall?

24 A. No, I said I'm recalling, it would've been  
25 some time in the afternoon.

1 Q. Now, how did you do that? Did he come  
2 physically to your office, or how did you do this?  
3 Did you read it to him telephonically, or did you e-  
4 mail them or what?

5 A. I e-mailed them to him electronically.

6 Q. You did?

7 A. Yes, sir.

8 Q. Okay. So now, after you e-mailed them to  
9 him, then as a result of information you received from  
10 him, you later got basically in touch with somebody or  
11 what? Or what did you do after you -- after you e-  
12 mailed him, let me ask about that.

13 A. I continued my investigation.

14 Q. What did you do when you continued your  
15 investigation?

16 A. Well, first of all, we had an individual in  
17 custody for the box that was mailed -- first of all,  
18 we had (indiscernible) we had just done a controlled  
19 delivery, so we're handling numerous amount of things  
20 with Mr. Griffin, who's currently in custody in my  
21 office.

22 We are preparing forward the plane to come  
23 in from California, so we can go down and intercept  
24 the next two parcels, numerous things are going on.

25 Q. Okay. Now, you say you're preparing for the

1 plane --

2 A. Uh-huh.

3 Q. -- do you know what airline this was, or was  
4 this a postal airline or I mean, specifically a U.S.  
5 Postal plane, or was this a commercial airline?

6 A. The -- we don't have any planes.

7 Q. Okay. So it was a commercial airliner?

8 A. Yes.

9 Q. Do you know what airline? Was it Delta,  
10 U.S. Air, who?

11 A. I believe it's FedEx that brings our  
12 packages in.

13 Q. FedEx, okay. Okay. Now -- wow, the U.S.  
14 uses FedEx. Okay.

15 And you say you believe, you don't know?

16 A. Again, I don't recall, I believe it's FedEx.  
17 I wasn't physically plane side.

18 Q. Okay. Okay. So you didn't retrieve the  
19 actual package, right?

20 A. I did not, no.

21 Q. But the package -- well, who retrieved the  
22 package?

23 A. One of the inspectors from my team.

24 Q. And that was at the airport?

25 A. That's at our air mail facility.

1 Q. Air mail facility, where is that?

2 A. In Essington.

3 Q. So that's right near the airport?

4 A. Adjacent to the airport, yes, sir.

5 Q. Adjacent to the airport, okay. Okay. And  
6 so the package was retrieved at that point?

7 A. Correct.

8 Q. Yeah, at what time was that?

9 A. Again, it's some time. I couldn't -- planes  
10 come in at 6 -- I want to say the first one's at 5:30,  
11 one's -- the second one's at 6:30, I'm guesstimating  
12 somewhere around there, depending on their delays,  
13 weather conditions, and things like that.

14 Q. You said 5:30 or 6:30?

15 A. There's two planes generally.

16 Q. Well, what about on this particular  
17 instance, do you know what time the plane got there  
18 and --

19 A. Again, I don't recall exactly what time the  
20 plane got there.

21 Q. Do people leave their office to go meet the  
22 plane?

23 A. Yes.

24 Q. Okay. Well -- and you were at the office  
25 when they left, right?



1 A. Yes.

2 Q. So you don't know what time they left and  
3 they were right there at your office?

4 MR. TULANTE: Your Honor, objection, I  
5 think he's --

6 THE COURT: Sustained.

7 MR. MILLER: Withdraw the question,  
8 withdraw the question, withdraw the question.

9 BY MR. MILLER:

10 Q. Okay. Who was it that -- who are the people  
11 that left to go retrieve the package?

12 A. I believe Inspector Zavorsky (ph) is the  
13 inspector who actually brought the parcel.

14 Q. You say you believe?

15 A. Again, I recall it was Inspector Zavorsky  
16 who brought the parcel to me.

17 Q. You said Goborsky?

18 A. Zavorsky.

19 Q. Za. And any particular reason why that name  
20 comes up that he was the one?

21 A. What, I'm sorry?

22 Q. Any particular reason why you recall -- why  
23 is it that you just recall, and you don't know for  
24 sure, but why is it that his name is the one that  
25 you're telling me right now?

1           A.     Because he was one of the inspectors that  
2     went to the in ramp (ph) facility.

3           Q.     He was one of them?

4           A.     Correct.

5           Q.     And there were others?

6           A.     I believe there was ten inspectors at the in  
7     ramp facility. There are thousands of parcels that  
8     arrive at that facility.

9           Q.     Right, I understand. But who are the ones  
10    that left your office to go get these particular --  
11    this particular parcel, these two particular parcels?  
12    I'm just trying to find out. I'm trying to basically  
13    get a chain of custody basically really.

14          A.     Okay. I have no idea who left the office  
15    again that day. We had executed a controlled  
16    delivery, we took someone into custody, we were in the  
17    process of interviewing Mr. Griffin, I'm on the phone  
18    with the Assistant United States Attorney, ten  
19    inspectors went down there. I recall Inspector  
20    Zavorsky bringing the parcels into my office prior to  
21    me taking them to Detective Kelliher.

22          Q.     So he brought them in. So what time was  
23    that?

24          A.     Sir, again, it's some time in the evening  
25    prior to us contacting Judge Caracappa to advise her

1 that canine Kirby positively indicated on the parcels.

2 Q. And when you say evening, are you talking  
3 about after 6 o'clock p.m.?

4 A. Absolutely.

5 Q. Okay. But before 9 o'clock, though, right?

6 A. Yes, sir.

7 Q. Okay. Between 6 and 9. Now, you -- and  
8 once you got the package, you had already prepared  
9 your affidavit, and then you forwarded that affidavit  
10 to someone, correct, you said Mr. Tulante, right?

11 A. I'm not sure if I -- I don't know if you had  
12 the order of that correct.

13 Q. Okay. Well all right, then you know what  
14 time. But anyway, the point is, is that you had the  
15 package, and this was at about you say somewhere  
16 between 6 and 9, but again, let me just go back, and  
17 this is -- we're talking -- at one point, I was just  
18 speaking about, I believe it was package 391. But I  
19 want to go specifically to package number -- I believe  
20 it is 581.

21 And I believe it's the -- it's referred to  
22 in your affidavit that's a part of the Government's  
23 Exhibit D, if you -- it's Government Exhibit D. And  
24 it's actually the -- let me make sure, it's actually  
25 the next to the last page of that exhibit. Next to

1 the last page of Exhibit D of -- it's next to the last  
2 page of Exhibit D, it's marked as page 3, but it's  
3 actually next to the last page of Exhibit D. Do you  
4 see it?

5 A. Yes.

6 Q. All right. Now, do you see paragraph 5  
7 there? It's marked paragraph 5, do you see that, at  
8 the top?

9 A. Yes.

10 Q. Okay. And paragraph 5 reads, would you  
11 agree, exactly like -- this second to last page reads  
12 exactly like this whole page, reads exactly like -- I  
13 guess that would be the fourth page. Let me see one  
14 -- yeah, the fourth page of Exhibit D, which is marked  
15 page 3 again.

16 A. Okay. Hold on.

17 Q. The fourth page of Exhibit D, starting from  
18 the front to the back, the fourth page of Exhibit D is  
19 exactly like the next to the last page of Exhibit D.  
20 That is exactly like --

21 A. I'm really confused. Okay.

22 MR. MILLER: If I may approach, Judge,  
23 just to point out what I'm talking about.

24 THE COURT: Do you understand, sir? Do  
25 you need some assistance? Would you like him to point

1 it out?

2 THE WITNESS: Certainly, Your Honor.

3 MR. TULANTE: Yeah, I think, Your  
4 Honor, we'll have to disassemble Exhibit D, so.

5 THE WITNESS: I apologize.

6 MR. MILLER: I don't think you have to  
7 disassemble it.

8 THE WITNESS: No, I think I  
9 disassembled it.

10 MR. MILLER: Oh, I'm sorry.

11 THE COURT: You may approach, no  
12 problem.

13 MR. MILLER: Thank you, Your Honor,  
14 thank you.

15 BY MR. MILLER:

16 Q. Okay. Exhibit D --

17 A. Are you referencing the two affidavits?

18 Q. Yes.

19 A. Okay. Then I'm with you.

20 Q. Paragraph 5 in the two affidavits. Do you  
21 see them?

22 A. Right here, sir.

23 MR. MILLER: Thank you. Your Honor,  
24 may I be permitted to go back to my seat, Judge?

25 THE COURT: Yes, sir.

1 MR. MILLER: Thank you.

2 BY MR. MILLER:

3 Q. Would you agree that basically -- not  
4 basically, exactly, to the letter and to the T, that  
5 those two pages are exactly the same?

6 A. I'm going to say they're probably very  
7 close, if not exactly the same. This is the language  
8 I use when I have a positive indication on all of my  
9 search warrant applications.

10 Q. I would ask you to please point out any  
11 differences between those two pages, other than let's  
12 say, maybe the distance from the heading, the top to  
13 the first line, and the distance from the bottom of  
14 the page to the bottom line --

15 A. Well, first and --

16 Q. -- other than the margins, other than the  
17 margins, are they exactly alike?

18 A. Absolutely not, sir.

19 Q. They're not?

20 A. No. On -- I'm just going to do it by the  
21 tracking --

22 Q. Okay. They're not.

23 A. By the tracking number 0581, if I can call  
24 your attention, sir, to paragraph number 7.

25 Q. Yes.

1           A.    I say, "The subject parcel contains  
2 substances in from Los Angeles, California to Plymouth  
3 Meeting, Pennsylvania via priority mail."

4           Q.    Right.

5           A.    To go over to the second affidavit, which  
6 the last three digits would be -- I'm sorry, last four  
7 digits would be 0391.

8           Q.    Okay.

9           A.    If I can point you to the same paragraph,  
10 that's going to say --

11          Q.    Which paragraph was that?

12          A.    Paragraph number 7, sir.

13          Q.    Seven.

14          A.    That's going to say, "The subject parcel  
15 contains controlled substances sent from Valley  
16 Village, California to Morristown, New Jersey."

17          Q.    Okay. Let me ask you this. Looking at  
18 paragraphs 5 and 6, okay?

19          A.    Uh-huh.

20          Q.    And specifically the first sentence of  
21 paragraph five --

22          A.    Okay.

23          Q.    -- the sentence in the first -- sentence in  
24 paragraph 5, and all of paragraph 6.

25          A.    Uh-huh.

1 Q. Are they exactly to the tee the same?

2 A. I better read them. My belief is going to  
3 be yes.

4 Again, sir, this is standard search warrant  
5 templates that I've executed hundreds of.

6 Q. I understand that, but are they exactly the  
7 same?

8 A. Yes.

9 Q. The first sentence of paragraph 5 and  
10 entirety of paragraph 6 which is just one -- two  
11 lines, one sentence.

12 A. Yes, sir --

13 Q. Okay.

14 A. -- from what I can tell, they're exactly the  
15 same.

16 Q. Okay. Okay. Now, let me just make sure I'm  
17 correct. These facts are true, right?

18 A. Absolutely, sir.

19 Q. Okay. Okay. Okay. Okay. Now, if they are  
20 true, then going to the first page of paragraphs -- of  
21 Defense Exhibit D, are you familiar with that page, or  
22 do you have it?

23 A. I only have addendum to Defense A, that's  
24 all in front of me.

25 Q. You don't have Defense Exhibit D?



1           A.     No, sir.

2                     THE COURT:   It's Government's Exhibit

3     D.

4                     MR. MILLER:   I'm sorry.

5                     THE WITNESS:   I have Government's

6     Exhibit D.

7     BY MR. MILLER:

8           Q.     Government Exhibit D, I'm sorry.

9           A.     Okay.

10          Q.     Do you have that?

11          A.     I have that now, sir, yes.

12          Q.     The first page, okay. Now, as we did  
13     before, the next to the last sentence there, you know,  
14     let me -- right. And I'll just read it, and I'll just  
15     see if you (indiscernible) you can see it, these  
16     packages are on the planes in route to Philadelphia  
17     International Airport, and they're not expected to be  
18     presented to the drug detection dog until 9:30 p.m.  
19     tonight at the earliest; am I correct?

20          A.     That's --

21          Q.     That's what it says.

22          A.     That's what you just read, correct, sir.

23          Q.     That's what it says, right?

24          A.     Yes, sir. Yes.

25          Q.     Okay. Okay. Okay. Yeah, and that was

1 submitted at about 5:30 p.m.; am I correct, up at the  
2 top?

3 MR. TULANTE: Your Honor, I apologize  
4 for --

5 THE COURT: Sustained.

6 MR. TULANTE: -- we've gone over this.

7 MR. MILLER: Well not with regards to  
8 this package, though, okay, but I understand. This is  
9 package 581. We did it for package 391, and I'm just  
10 comparing, Judge, and I understand the Court's ruling.

11 THE COURT: All right. Go ahead.

12 MR. MILLER: Thank you, sir. Thank  
13 you, Your Honor.

14 BY MR. MILLER:

15 Q. So what's in the first paragraph on the  
16 first page of the next to the last sentence, doesn't  
17 that -- isn't that in contradiction to what you just  
18 testified to on cross that you already had the package  
19 between 6 and 9, and that's before 9:30, isn't it?

20 A. Can you reask the question?

21 Q. That was a compound question. Let me make  
22 it a little more simpler. Did you just earlier  
23 testify that you all had intercepted the package, you  
24 and your other ten other officers, had intercepted the  
25 package, and I'm talking about package 581,

1 (indiscernible) of 391, somewhere between 6 and 9  
2 o'clock p.m. on the 13th; am I right? Did you just  
3 say that?

4 A. Yes, I did.

5 Q. Okay. Okay. You just said that. Now, I'm  
6 asking you on the front page for specifically though  
7 for package number 581, okay. That bottom line,  
8 that's not true. The last -- the next to the last  
9 sentence on that page, on that paragraph, on the first  
10 page of the Government's Exhibit D, that sentence is a  
11 lie, isn't it?

12 A. Sir, I didn't write this e-mail.

13 Q. Oh, oh, I didn't ask you that. All I asked  
14 you, is it true and correct to the best of your  
15 knowledge, information, and belief and you're under  
16 oath. Is that sentence the truth or a lie? It says  
17 it wasn't expected to get there.

18 THE COURT: Counsel, let him answer the  
19 question.

20 MR. MILLER: I'm sorry.

21 THE WITNESS: Sir, this sentence  
22 indicates the packages are on the plane, they're in  
23 route to Philadelphia International Airport, and are  
24 not expected to be presented to the drug detection dog  
25 until 9:30 tonight at the earliest.

1                   It was our belief that we were trying  
2   to give Judge Caracappa a timeline as she had  
3   requested from us, as to when she should make sure  
4   she's available via telephone. This was a  
5   conversation we had ask -- where she asked us -- we  
6   explained to her, Your Honor -- Her Honor, the parcels  
7   are in route to Philadelphia, we identified this, we  
8   wrote the warrant applications, we requested to her if  
9   she wished, we could send them over in anticipation of  
10  the boxes entering the Eastern District of  
11  Pennsylvania.

12                  Judge Caracappa requested that we send  
13  the warrants over as AUSA Tulante indicated in this e-  
14  mail, he did. I don't think -- you're taking one  
15  sentence of an e-mail that's not all encompassing.  
16  Judge Caracappa was asking us, should I expect a call  
17  from the inspectors at midnight, or should I expect a  
18  call from you at 6:30.

19                  We timed it in the event of weather  
20  delays and things out of my control as to what time I  
21  would physically be able to have in my hands -- again,  
22  you understand the (indiscernible) facility has a  
23  thousand plus boxes at any given night. We had ten  
24  inspectors at the facility trying to find two boxes,  
25  which equates to a needle in a haystack.

1                   Once we found those boxes, we had to  
2 bring them back to our office, at which time we had a  
3 canine already there on standby, and I presented them  
4 to canine Kirby. I think the 9:30 was, in all  
5 honesty, the Judge requested a timeline, and I felt  
6 based on my experience, that we shouldn't have to  
7 contact her or we should be contacting her prior to  
8 9:30, which we did, because she approved our warrants  
9 at 9:20.

10 BY MR. MILLER:

11           Q.    I understand, I understand.

12           A.    So I was pretty -- my calculation was fairly  
13 accurate that we would be contacting her around the  
14 9:30 area.

15                   THE COURT: All right. Move on,  
16 please.

17           Q.    Great, great, great, yes, beautiful, but now  
18 your -- this statement says no earlier than 9:30.

19                   MR. TULANTE: Your Honor, objection,  
20 asked and answered.

21           Q.    Right?

22                   THE COURT: Counsel, the record is  
23 clear.

24                   MR. MILLER: Okay. Okay. Okay.

25           Q.    Now, you said something about the timeline,

1 the timeline -- the word timeline is not in here, all  
2 that -- you talk -- you just testified to beautifully  
3 is not --

4 THE COURT: Counsel, counsel, let me  
5 suggest this --

6 MR. MILLER: Sure.

7 THE COURT: -- I'm not a jury.

8 MR. MILLER: I'll move on.

9 THE COURT: All right. I'll move on.

10 MR. MILLER: Move on, please.

11 BY MR. MILLER:

12 Q. Now, let me just ask you this and then we'll  
13 move on, just -- I'll make it paragraphs 5 and 6, I  
14 think I asked you this, though, previously. 5 and 6  
15 are true and correct; am I correct? On -- regard --  
16 on page 4 of the Government's Exhibit D and also the  
17 next to the last page of Government Exhibit D.

18 MR. TULANTE: Your Honor, we'll  
19 stipulate that they are true and correct.

20 THE COURT: Thank you.

21 MR. MILLER: Okay.

22 Q. Now --

23 MR. MILLER: And can I get a  
24 stipulation in regards to -- well, forget, no, no, no.

25 Q. Let me just ask it like this. You said you

1 had the package sometime between 6 and 9, right?

2 A. Yes, sir.

3 Q. Okay. When was the package scanned in  
4 Philadelphia?

5 MR. TULANTE: Your Honor, just so the  
6 record's clear, there are two packages involved  
7 (indiscernible) --

8 MR. MILLER: Okay. I'm sorry  
9 (indiscernible).

10 Q. That'd be the package number 581, parcel  
11 number 581. When was the package scanned?

12 A. Sir, if I can look at your addendum to  
13 Defense Exhibit A, I believe you're pointing out in  
14 the in route process scan that was scanned on 11/13 at  
15 23:06 hours, I believe that's what you're stating to,  
16 or you're asked.

17 Q. No, I'm asking you, when was the package  
18 scanned, based on your knowledge, information, and  
19 belief and based on any of your records?

20 A. Okay. Inspector Zavorsky scanned this label  
21 at 23:08 after the search warrant was executed and two  
22 kilograms of cocaine were discovered inside this box.

23 Q. Uh-huh. Now, are you saying that the  
24 container that contained this package and other  
25 packages, multiple packages, all right, that were on

1 the plane, are you saying that container was not  
2 scanned when it got to the airport?

3 A. There may -- I don't believe the post office  
4 has a scan at the air mail facility when the  
5 containers come in off of the airplane.

6 Q. You don't believe it you said.

7 A. I don't believe.

8 Q. You don't know?

9 A. I don't believe.

10 Q. Right, okay. So now there's an indicator  
11 that says scanner ID right here. Are you saying that  
12 was Detective Zavorsky because of the scanner ID  
13 number? Does he have a scanner ID number?

14 MR. TULANTE: Your Honor, there are  
15 multiple questions in there and I'm just --

16 MR. MILLER: I withdraw it.

17 THE COURT: Sustained.

18 MR. TULANTE: I mean, I'm --

19 MR. MILLER: I'll withdraw it, I'll  
20 just ask one question.

21 BY MR. MILLER:

22 Q. Was Detective -- you said detective I  
23 believe it is or --

24 A. Inspector.

25 Q. Inspector Zavorsky, does he have a scanner



1 ID number?

2 A. No, sir, he doesn't.

3 Q. Can you see the scanner ID number here  
4 that's indicated on this particular document?

5 A. No, sir, but I know that --

6 Q. You don't see that?

7 THE COURT: Counsel?

8 MR. MILLER: I'm sorry, he said no, I  
9 want to make sure that -- I want to make sure that  
10 he's --

11 THE COURT: Let him finish his answer,  
12 then continue with your examination.

13 MR. MILLER: Okay. Yes, I'm sorry, I'm  
14 sorry, thank you, Your Honor.

15 THE COURT: Do you --

16 THE WITNESS: Sir, I directed Inspector  
17 Zavorsky at approximately 10:30 to scan this parcel  
18 into Philadelphia, in an effort to make the parcel  
19 look like it was not intercepted by law enforcement,  
20 so that we could conduct a controlled delivery the  
21 following day where Stacy Epps (ph) was taken into  
22 custody.

23 BY MR. MILLER:

24 Q. Right. Now -- and he scanned it with a --  
25 and has a scanner ID number, when he scanned it, his

1 scanner ID number would appear?

2 A. No, sir.

3 Q. Okay. And do you see the scanner ID number  
4 there?

5 A. No.

6 Q. On package number 581, do you see that?

7 A. Yes, sir.

8 Q. And is that information true and correct?

9 A. It's on the -- each scanner in the post  
10 office, there's probably tens of thousands of  
11 scanners. Inspector Zavorsky picked up a scanner and  
12 scanned it and processed it.

13 Q. You were there when he did this?

14 A. No, sir.

15 Q. Oh, so Detective -- I'm sorry, Inspector  
16 Zavorsky told you all this, right?

17 A. Yes, sir.

18 Q. That he picked up a scanner and scanned the  
19 package.

20 A. There's numerous ways he could do it, but  
21 yes, this package was scanned at a postal facility in  
22 route process to Philadelphia.

23 Q. Now, do you see right next to that, it says  
24 container generated?

25 A. Yes, sir.

1 Q. So that would mean that that would be a  
2 container.

3 A. I have no idea what that means.

4 Q. You deal with postal -- with the postal  
5 database on a much -- on a regular basis, don't you?

6 A. Yes, sir.

7 Q. And you've been a postal inspector how long?

8 A. Since April of 2012.

9 Q. And you don't know what container generated  
10 means?

11 A. Sir, the post office has probably upwards of  
12 a hundred different scans, scanners, container  
13 generated means nothing to me.

14 Q. Means nothing to you.

15 A. No, sir.

16 Q. Would it surprise you that it means that a  
17 container was scanned.

18 MR. TULANTE: Your Honor, I'm renewing  
19 my objection, I'm sorry to be a pest to the Court, but  
20 just trying to keep counsel directed. I'm just  
21 concerned that we're going far afield --

22 MR. MILLER: Okay.

23 MR. TULANTE: -- again so that  
24 that's --

25 THE COURT: The objection is sustained.

1 BY MR. MILLER:

2 Q. So, sir, bottom line is that you don't even  
3 know really, you weren't there, and you don't know  
4 when the package was scanned; isn't that right?

5 A. Sir, I had the package in my custody prior  
6 to the search warrant, which was approved at 9:20, and  
7 we executed at 9:25 and one at 9:30. After that, we  
8 went through investigative techniques that we do in  
9 order to put narcotics into the individuals who were  
10 shipping them to themselves. So I was not there for  
11 the scan.

12 Q. Right. Well, you answered one part, you  
13 weren't there. So you don't know when the package was  
14 scanned.

15 MR. TULANTE: Objection, Your Honor, he  
16 did --

17 THE COURT: Sustained. Clearly he  
18 didn't know from his personal knowledge, Counsel.

19 Q. Now -- that's right. Now, make sure I'm  
20 correct on that, you don't know when the -- who was  
21 present when the dog sniffed or the canine was exposed  
22 to the package, you don't know who was there, right?

23 A. I believe I just testified previously that I  
24 was there, as well as Detective Kelliher and --

25 Q. And other people, you don't know the names

1 of others that were present?

2 A. No, sir.

3 Q. Okay. And there were others present, right?

4 A. I believe so.

5 Q. Okay. And you don't know -- let me ask you  
6 the procedure that was utilized in -- when the dog was  
7 brought in, or prior to the dog being brought in.  
8 What procedure was used in the dog detection of the  
9 package?

10 MR. TULANTE: Your Honor, objection  
11 again we're --

12 THE COURT: Sustained.

13 BY MR. MILLER:

14 Q. Well, aren't there procedures specifically  
15 that you all go by as a postal inspector that you  
16 utilize before the handler or the canine are exposed  
17 to packages, that have already been identified as  
18 suspect?

19 MR. TULANTE: Your Honor, I recognize  
20 the Court's emphasis on civility, but I usually don't  
21 get up and object, but I really have to renew my  
22 objection on the basis I articulated before.

23 THE COURT: Counsel for the Government  
24 has articulated that they presented evidence for the  
25 Court to consider on the four corners of this warrant.

1 To the extent that the canine did sniff or did not  
2 sniff in terms of the good faith exception issue has  
3 no relevance whatsoever to this.

4 MR. MILLER: Well, Judge, I think that  
5 it has -- it forms some of the basis of the probable  
6 cause in the warrant, in fact, it's stated in the  
7 warrant that the above facts are relied upon by the  
8 (indiscernible) to believe that probable cause exists,  
9 and that's why I'm going to the accuracy of those  
10 statements, that there was procedures to be followed  
11 that they followed when dogs are -- and did they  
12 follow those procedures, and if not, why, in this  
13 particular instance.

14 THE COURT: Again, to the extent that  
15 the witness has testified that based upon the totality  
16 of circumstances he secured a warrant, it's within the  
17 four corners of the warrant that the Court must make  
18 its decision.

19 MR. MILLER: I understand, Judge, I was  
20 just going to the material statements within the  
21 warrant within the four corners, that's what I was  
22 trying to present.

23 THE COURT: Do you wish to respond to  
24 that specifically?

25 MR. TULANTE: Yes, Your Honor, let me

1 sort of step back a little bit. I think we  
2 articulated this in our letter to the Court yesterday.  
3 The process is this Court looks at the four corners,  
4 and determines whether the magistrate judge had a  
5 substantial basis for issuing the warrant, and failing  
6 that, whether or not this agent relied in good faith.

7               So to the extent that the dog had some  
8 issues with his background, or there were process and  
9 procedures that were not followed, that's irrelevant,  
10 so long as this affiant, Inspector McStravick was able  
11 to establish in the four corners that there was  
12 probable cause, and that the magistrate relied on it.

13               Now, I understand that one of the  
14 reasons that we wrote the letter to the Court was  
15 because we understand that there's going to be several  
16 broad sides thrown at the Detective Kelliher and  
17 Kirby, and again, I think as Your Honor really hit the  
18 nail on the head, that that's really irrelevant for  
19 purposes of this proceeding.

20               Now, for -- in order for him to try to  
21 identify that there are material misstatements, he has  
22 to give an offer of proof. He has to provide some  
23 reliable indication to this Court that there are  
24 falsities in the affidavit. What he simply can't do  
25 is allege in summary fashion that they're falsities,

1 and therefore, he's entitled to searching cross-  
2 examination of Inspector McStravick.

3 And to be clear, we understand that  
4 this Court has to rely on some record to determine  
5 whether or not the warrant was properly signed,  
6 because it has my name on it, you know, my signature  
7 on it and the date and so forth, and that's why we  
8 presented the testimony.

9 And, of course, we touch on the  
10 background, but the concern I've had all along, Your  
11 Honor, is as I've articulated, is that this is not the  
12 vehicle for defense counsel to then start trying to  
13 identify material misstatements without he moving  
14 forward initially, and articulating a basis for his  
15 belief that they're falsities. He can't just say  
16 they're false, the dog isn't certified, and sit down  
17 and have a full blown evidentiary hearing. That's the  
18 process as we understand it, Your Honor.

19 THE COURT: And in terms of the order  
20 of things, the order of the events, at what point in  
21 time did the or does the record indicate, by reason of  
22 the testimony, that the dog performed any sniffing  
23 activity.

24 MR. TULANTE: And I think the testimony  
25 of Inspector McStravick is around 8:30, between 8:30



1 and 9:20.

2 THE COURT: Well, was that before the  
3 warrant was secured?

4 MR. TULANTE: Absolutely, and that's  
5 what I'll clarify on redirect.

6 THE COURT: Mr. Miller.

7 MR. MILLER: Judge, yes, I got that  
8 information simultaneously when the Court received  
9 that information about 8:30, because there is no  
10 documentation verifying what Mr. Tulante just said, or  
11 what the postal inspector has testified to. In fact,  
12 there's documentation to the contrary to what he has  
13 testified to. And it talks about a container  
14 generated scan, and it talks about that scan being  
15 done in Philadelphia, okay, and it says in route  
16 processed in Philadelphia at 11 o'clock at night, and  
17 it's when it's scanned, when it arrives in  
18 Philadelphia.

19 His testimony the whole time has been  
20 oh, it got there between 6 and 9, and we have the --  
21 we gave the affidavit to the magistrate and the  
22 magistrate reviewed it no later than 9:20, because it  
23 was at that time, while we were in the conversation  
24 with the magistrate that the magistrate told us to put  
25 9:20 on the document. Okay?

1                   So we know that at least by 9:20, the  
2 magistrate supposedly looked at the document, fine.  
3 If the magistrate looked at the document at 9:20 in  
4 the evening, but the document doesn't get to  
5 Philadelphia, according to their own postal tracking  
6 records until 11 o'clock at night, and the affidavit  
7 of probable cause says that the dog -- they're already  
8 been exposed to, and had already alerted that there  
9 were some controlled substances in the package, then  
10 wait a minute that throws -- that's a material  
11 misstatement within the affidavit itself. That  
12 (indiscernible) their own records.

13                   THE COURT: Mr. Miller, just a second.

14                   MR. MILLER: Yes, sir. Yes, Your  
15 Honor.

16                   THE COURT: Has that not been  
17 demonstrated through your cross-examination up to this  
18 point in time?

19                   MR. MILLER: I believe it has, Judge.  
20 I have not dealt with package 581. And I have not  
21 dealt with this addendum, and this addendum we just --  
22 I just presented it --

23                   THE COURT: What more did you do with  
24 this.

25                   MR. MILLER: Yes, sir. Yes, sir. Yes,

1 sir.

2 Court's indulgence one moment.

3 THE COURT: Yes, sir, take your time.

4 I'm not rushing you. I'm just simply trying to get  
5 you to understand that you've made a record --

6 MR. MILLER: Oh, yes, sir.

7 THE COURT: -- and we need not  
8 continuously go over this.

9 MR. MILLER: Thank you, sir. Thank  
10 you. I appreciate that, Your Honor.

11 (Pause)

12 BY MR. MILLER:

13 Q. Okay. And, Mr. McStravick, I'm going to ask  
14 you first about a tracking device that was placed in  
15 the article with the priority mail number with 072 at  
16 the end.

17 I believe it's part of what I have marked,  
18 what has previously been marked as Defense Exhibit D.  
19 I'm sorry, Defense Exhibit A. There is no A.

20 A. Excuse me, sir, I don't have that exhibit.

21 Q. You don't have that exhibit? Okay. I think  
22 I have an extra packet here. Let me --

23 MR. MILLER: If I may approach, Your  
24 Honor?

25 THE COURT: Yes, sir.

1 MR. MILLER: Thank you. I'll give it  
2 to your staff. Thank you.

3 THE CLERK: Uh-huh.

4 THE WITNESS: Thank you, ma'am.

5 MR. TULANTE: What package?

6 MR. MILLER: A, I've only got one.

7 MR. TULANTE: No, I mean, what was the  
8 parcel number.

9 MR. MILLER: Oh, 072.

10 MR. TULANTE: 072?

11 MR. MILLER: Yes, sir. May I proceed,  
12 Your Honor?

13 THE COURT: Yes, sir.

14 MR. TULANTE: Your Honor, may I object.  
15 The tracking device warrant is not one of the  
16 affidavits that identify in his motion, and when the  
17 Court asked the defendant to identify which motions he  
18 was seeking to suppress, he didn't identify this  
19 tracker affidavit, so I don't see the purpose of the  
20 testimony related to that, you know, I have his motion  
21 here, and I wrote down the different instruments he  
22 was attacking, and this wasn't one of them.

23 THE COURT: Mr. Miller?

24 MR. MILLER: Yes, Your Honor, just one  
25 moment, Your Honor.

1 (Pause)

2 MR. MILLER: Judge, regarding the -- I  
3 did mention that the initial warrant were to search  
4 and seize package that ended in 072. I spoke about  
5 that specifically, but I specifically indicated that  
6 the fruits of that package being seized, I  
7 specifically made reference to that, and I don't know  
8 if Mr. Tulante wrote that down, but I specifically  
9 talked about the fruits of -- and that I was asking  
10 that all that also be suppressed, and that was a part  
11 of my motion.

12 And so the tracking device that was put  
13 in there, was as a result of the actual warrant being  
14 deficient as far as we're concerned. Okay. And so  
15 I'm going -- I guess I'm starting at the -- I'm  
16 backing into this, but I'm starting with the tracking  
17 device and its warrant, and how it was improper, and  
18 then I intend to go into the actual warrant itself was  
19 72 or 072 to show how it was improper. But I'm  
20 dealing with the fruits of, and what's going on, maybe  
21 that's causing the confusion, I apologize.

22 MR. TULANTE: Your Honor, I'm not  
23 confused. It's a -- I understand he's trying to  
24 suppress all the fruits of it, but it doesn't mean  
25 that he gets to identify every single warrant, or

1 every single seizure as -- you know, he attacks the  
2 initial affidavit, which he does in his papers, and  
3 that one, Your Honor, there's no dispute, there's  
4 clearly a four corners analysis, because he's not  
5 alleging that there was any -- that the judge,  
6 magistrate judge didn't sign it, or there were any  
7 improprieties in the way it was obtained.

8 So it would be no evidence relevant to  
9 that should be admitted, because the Judge -- Your  
10 Honor looks at the four corners, determines after that  
11 if there's no probable cause, whether he relied on  
12 good faith.

13 So to the extent he's looking at  
14 fruits, he doesn't then elicit testimony from the  
15 agent regarding every single step that was taken  
16 afterwards, because the legality is determined by Your  
17 Honor's initial assessment on the first affidavit.

18 THE COURT: The objection is sustained.

19 MR. MILLER: Yes, sir. Okay. And,  
20 Judge, I wasn't sure that you'd already previously  
21 ruled on this particular warrant or its affidavit --

22 THE COURT: I haven't ruled on  
23 anything.

24 MR. MILLER: Right, okay, that's why I  
25 was -- but I understand, okay.

1 THE COURT: Let me point out that  
2 you've made a record and so much of this is asked and  
3 answered.

4 MR. MILLER: Okay. Well, I'm going to  
5 go to a different package altogether, that would be  
6 the first one.

7 THE COURT: As long as it's within the  
8 ambit of what you've announced as what you are seeking  
9 to suppress.

10 MR. MILLER: Yes.

11 THE COURT: And what you've put the  
12 Government on notice of producing in their case in  
13 chief.

14 MR. MILLER: Yes, sir. And it was the  
15 initial warrant, as well as the fruits thereof, and  
16 that were obtained as a result of the initial warrant  
17 being executed.

18 THE COURT: All right.

19 MR. MILLER: And that's the only reason  
20 why I went to the tracking device, Judge.

21 THE COURT: All right.

22 MR. MILLER: And I didn't mean to --  
23 like I said, originally cause any confusion, but I  
24 just saw that as a logical progression.

25 THE COURT: Mr. Tulante said he was not

1 confused. You may move on.

2 MR. MILLER: Thank you.

3 BY MR. MILLER:

4 Q. Now, with regards to package number 70 --  
5 072, the one that ends in package 072, that search  
6 warrant, let me see, let me see if I have that number  
7 here. Hold on. I believe it's a part of Government's  
8 package, if I'm not mistaken, yes, it is, it's  
9 actually Exhibit A. That would be Case No. 13-1285-M,  
10 it's the second page of the Government's Exhibit A.

11 MR. TULANTE: Your Honor, I do sound  
12 like a broken record now, but this is a -- again  
13 Exhibit A, that's the 072 package, that's a four  
14 corners analysis.

15 THE COURT: Sustained.

16 MR. TULANTE: In his motion, he -- I  
17 mean, he identifies that there was no probable cause  
18 and it was unconstitutional and so forth, and there's  
19 no evidence -- it's a matter of law this Court  
20 could --

21 THE COURT: Sustained.

22 MR. MILLER: Judge, without you making  
23 a ruling, am I not allowed to ask -- cross-examine on  
24 because he was on direct, asked about Exhibit A, and  
25 this particular package, and that's all I'm just



1 asking about it. I mean, I --

2 THE COURT: It is a four corners  
3 decision, correct?

4 MR. MILLER: I understand, Judge.

5 THE COURT: You have the right, sir, to  
6 attack what has been characterized in the case law as  
7 knowing and intentional false statements with reckless  
8 disregard for the truth.

9 MR. MILLER: Exactly.

10 THE COURT: Is that what you're trying  
11 to prove by this cross-examination?

12 MR. MILLER: Well, yes, I want to show  
13 some things, I want to -- I'm hoping that I'm able to  
14 show that, Judge. I've been able to show -- I believe  
15 I've been able to show that already in regards to some  
16 of the other packages, and I'm attempting to start and  
17 it won't be long, it won't be long --

18 THE COURT: Go ahead.

19 MR. MILLER: -- but start that with --

20 THE COURT: Go ahead.

21 MR. MILLER: -- the package that was  
22 testified to on direct.

23 MR. TULANTE: Your Honor, may I seek an  
24 offer of proof just because I don't -- my concern is  
25 that he -- any defense counsel can always allege that

1 are falsities, and therefore, put the affiant on the  
2 stand and then try to, you know, create some record.  
3 He has to come forward with something more than his --

4 MR. MILLER: Well, well --

5 MR. TULANTE: -- assertions that  
6 there's been -- they're material misstatements.

7 THE COURT: Well, it's Mr. Miller's  
8 position that the times that were demonstrated through  
9 the examination, cross-examination were not  
10 necessarily consistent with the content of the  
11 warrant, and also the direct examination times,  
12 correct, Mr. Miller?

13 MR. MILLER: That's correct, Judge.

14 THE COURT: Now, I will allow the  
15 continued cross-examination in that line of  
16 questioning, but that's it. Because it's still in the  
17 end the four corners that I'm dealing with here.

18 MR. MILLER: I understand, Your Honor,  
19 I understand.

20 THE COURT: All right.

21 MR. MILLER: And thank you, Your Honor.

22 And, Judge, I did allege in my --

23 THE COURT: Go ahead, I'm telling you  
24 to go ahead.

25 MR. MILLER: Yes, sir, but in regards

1 to your ruling just now, I did allege things about the  
2 State of California coming from California, that that  
3 was one of the things that allowed him to suspect that  
4 the package was suspicious.

5 THE COURT: Well, again, Counsel, in  
6 terms of good faith reliance on a warrant that was  
7 issued by a magistrate, that's what we're really tied  
8 here with, that's what we're dealing with here.

9 MR. MILLER: I understand, but I'm  
10 saying there are material misstatements in the  
11 warrant, that because it comes from Pennsylvania, or  
12 California or Alaska or even the country of Columbia,  
13 that doesn't --

14 THE COURT: Well now, he's testified to  
15 what he's testified to under oath and that's that.

16 MR. MILLER: Yes, sir. Thank you.

17 THE COURT: All right.

18 BY MR. MILLER:

19 Q. In essence (indiscernible), that's a good  
20 way to do it, let me just ask one question, give me a  
21 time -- not give me, would you please give me some  
22 type of timeline in regards to what happened with  
23 package that ended in 072 from the point that it was  
24 received here in Philadelphia to a point that it was  
25 indicated as being suspicious, and sort of point that

1 you received it, to the point that -- that you  
2 received it physically, to the point that the time  
3 that the dog was exposed to the package, those type of  
4 things, if you could just give me a timeline, some  
5 kind of a timeline on this --

6 THE COURT: Now, I'm not clear. I'm  
7 not clear.

8 MR. MILLER: Sorry.

9 THE COURT: I'm not clear with that  
10 question.

11 MR. MILLER: Okay. Let me -- I can  
12 start from the beginning then. I'm just asking for a  
13 timeline.

14 BY MR. MILLER:

15 Q. Let me ask it like this. When did package  
16 number 072, ending in package number 072 get to  
17 Philadelphia?

18 A. I believe that it arrived in Philadelphia on  
19 -- may I reference this, please?

20 I believe it would have arrived in  
21 Philadelphia on November 11th or very early in the  
22 morning on November 12th without having the record in  
23 front of me, I'm only giving an assumption.

24 Q. Okay. Now -- and then the package, when it  
25 arrived, I imagine it arrived at the international

1 airport; am I correct?

2 A. Yes.

3 Q. On a FedEx plane; am I correct?

4 A. Again, I believe so.

5 Q. And then after it arrived on the FedEx  
6 plane, the package was scanned at the airport in a  
7 container or not?

8 A. Again, sir, no one from the post office --  
9 the easiest way to summarize the air mail facility,  
10 it's contractors, no one from -- there's one person  
11 from the actual post office who oversees the  
12 contracting firm at the air mail facility.

13 When mail comes into the air mail  
14 facilities, it's enclosed in a sack. Those sacks have  
15 numerous parcels, letters, mail inside of them. Those  
16 sacks are then just quickly disbursed by zip code and  
17 sent to an actual post office facility for sorting,  
18 which is the first scan that will ever hit when it  
19 hits the post office sorting facility.

20 Q. You say which is -- I mean, that first scan  
21 is at the local post office, one of the local post  
22 offices?

23 A. No, sir, one of its -- one of the induction  
24 sites I had testified to earlier, Lindberg Boulevard,  
25 there's a facility up in the northeast, facilities in

1 Chester County, it honestly depends on where the  
2 parcel is going.

3 I guess the easiest way in summation, the  
4 post office, nothing's routine about the post office,  
5 mail moves, we move numerous packages, envelopes, so  
6 once it comes into Philadelphia, it's just divvied up  
7 by zip code and then inducted into the system, where  
8 postal employees will put a scan at a postal facility.

9 It may be easier if I just summarize the box  
10 that you were talking about earlier, we intercepted  
11 before anyone from the United States Post Office  
12 touched it, and was able to put a scan on it. That  
13 may make things clearer.

14 THE COURT: It does, all right.

15 BY MR. MILLER:

16 Q. So you said that you intercepted it, okay.  
17 And when you -- and when was it intercepted, I'm  
18 talking about a priority mail package that ends in  
19 072.

20 A. Sir, I intercepted that -- that box was  
21 intercepted on November 12th as my warrant affidavit  
22 states.

23 Q. On the 12th.

24 A. Yes, sir.

25 Q. Okay. And it was intercepted and from where

1 -- that was at the airport, that's where it was  
2 intercepted, or was it at one of these locations in --  
3 where was it in the --

4 A. Sir, again without the actual tracking  
5 record, I believe this parcel was intercepted at the  
6 actual delivery station. You realize we'd been doing  
7 surveillance on this case for a long period of time,  
8 and identified where mailings were going.

9 So we were already on the lookout for  
10 identified addresses that we suspected Mr. Simmons was  
11 mailing illegal narcotics to. This wasn't the first  
12 package. This wasn't the first box we had ever seen  
13 during this investigation.

14 Q. So you intercept that (indiscernible) and  
15 you were the one that intercepted it, right?

16 A. Inspector Richard Link (ph) intercepted this  
17 parcel.

18 Q. Okay. And do you have any ideas what time  
19 that was?

20 A. Some time before 9 a.m. approximately.

21 Q. On November 12th.

22 A. Yes, sir.

23 Q. Now, after it was intercepted, then what  
24 happened to the package by Inspector Link?

25 A. The package was brought to our office.

1 Q. By who, by Inspector Link or who?

2 A. Inspector Link, sir.

3 Q. And he got to your office at what time?

4 A. We'll say an hour after he intercepted it.

5 I don't know, sir.

6 Q. So there's no log kept on when packages are  
7 coming to the office, is that what you're saying?

8 A. Yes, sir, there's no log.

9 Q. When drugs are -- when there's suspected  
10 that drugs are being brought to your office?

11 MR. TULANTE: Your Honor, he's  
12 already --

13 THE COURT: Sustained.

14 BY MR. MILLER:

15 Q And -- okay. After it was brought to your  
16 office by Inspector Link (ph.) and is given -- what's  
17 done with it? Is it given to you or is it given to  
18 somebody else or what?

19 A The parcel is given to me where then I begin  
20 to prepare my search warrant affidavit.

21 Q You said it was given to you?

22 A Yes, sir.

23 Q Was it given to anyone else before you?

24 A Just me, sir.

25 Q And how do you know that?



1 THE COURT: Sustained.

2 MR. MILLER: Okay.

3 BY MR. MILLER:

4 Q Now, in essence, with the package, after  
5 it's given to you, what do you do with the package, if  
6 anything?

7 A Nothing. We copy -- as Inspector Link  
8 intercepts the parcel, he drives to our office. I  
9 contact Detective Kelliher and advise we have a  
10 suspicious parcel on the way to the office. When she  
11 arrives with K9 Kirby --

12 Q What time did you contact Detective  
13 Kelliher?

14 A Sir, I'm not sure. At some point in time  
15 after Inspector Link intercepted the parcel prior to  
16 the parcel being brought to my office.

17 Q And you don't know what time the parcel got  
18 to your office?

19 A No, sir.

20 Q Okay. And you don't know what time you  
21 contacted Detective Kelliher. And what time did  
22 Detective Kelliher get there, do you know?

23 A I don't know, sir.

24 Q Okay. And with -- after Detective Kelliher  
25 got there, how long after Detective Kelliher got there

1 was the dog exposed to the package?

2 A My assumption is a few minutes.

3 Q Your assumption. Did you say that?

4 A Yes, sir.

5 Q Okay. Well, you know, we don't want  
6 assumptions. But anyway, anyway -- all right. And  
7 was any preparation done prior to Detective Kelliher  
8 getting there with the package?

9 A No.

10 Q Was the package the only -- was the package,  
11 072, was that the only package that was presented to  
12 the dog?

13 MR. TULANTE: Objection, Your Honor. I  
14 think we're getting a little beyond timing.

15 MR. MILLER: I didn't hear the Court's  
16 ruling. I'm sorry.

17 THE COURT: Sustained.

18 MR. MILLER: Thank you, Your Honor.

19 BY MR. MILLER:

20 Q Okay. And let me just ask the general  
21 question. The dog giving the alert -- from the time  
22 that the dog was exposed to the time the dog gave an  
23 alert, were postal policies and procedures followed?

24 MR. TULANTE: Your Honor, objection --

25 THE COURT: Sustained.

1 BY MR. MILLER:

2 Q And then after the dog -- the dog -- did the  
3 dog give an alert?

4 A Detective Kelliher advised me that K9 Kirby  
5 alerted to the positive -- alerted positively to the  
6 odor of a controlled substance within that parcel.

7 Q Okay. And did you make a notation of that  
8 as to what time that happened?

9 A No, sir.

10 Q Okay. And then after the dog was -- after  
11 that happened, after the dog gave the alert, then  
12 after that happened, then what did you do? After the  
13 dog gave the alert.

14 A I finished my warrant -- warrant application  
15 -- application and affidavit for a search warrant. I  
16 sent it over to Assistant United States Attorney  
17 Tulante.

18 Q That's when you finished it, after the dog  
19 gave the alert, right?

20 A Absolutely.

21 Q You didn't pre-prepare it.

22 A No, sir.

23 Q And then after you forwarded the affidavit  
24 of probable cause and the warrant, after you did that,  
25 what did you do after that?

1           A     I waited to hear from the U.S. Attorney's  
2     Office here in the Eastern District of Pennsylvania to  
3     advise me if the warrant had been approved by the  
4     staff at the U.S. Attorney's Office and when the U.S.  
5     magistrate judge would be available to see me to swear  
6     to my affidavit.

7           Q     Okay. And what -- well, did somebody from  
8     the U.S. Attorney's Office contact you?

9           A     They did. I believe AUSA Copeland contacted  
10    me, advised me that, as indicated on the cover sheet,  
11    Supervisor Purton (ph.) approved the warrant and we  
12    were to see the  
13    judge -- we would have been there sometime around  
14    prior to 11:45 when I swore my warrant out in front of  
15    Judge Caracappa. She signed and dated it.

16          Q     And then after that, then -- then at that  
17    point, what did you do with the package?

18          A     The search warrant was executed.

19          Q     Okay. Let me just be clear, though, that,  
20    basically, you don't have any records or you have no  
21    idea as to the hours that -- when I say the hours, I'm  
22    talking about a 9 o'clock hour, a 10 o'clock hour, an  
23    11 o'clock hour, specifically, when numerous things  
24    occurred with this package. Am I correct? For  
25    instance --

1 MR. TULANTE: Here -- here again --

2 THE COURT: Sustained.

3 MR. MILLER: Okay.

4 BY MR. MILLER:

5 Q And you have no documentation to indicate  
6 that what you're -- what you have testified here to  
7 today is correct, am I correct?

8 MR. TULANTE: Objection.

9 MR. MILLER: Go ahead. I'm sorry.

10 MR. TULANTE: I'm just objecting.

11 THE COURT: You have no documentation -  
12 -

13 MR. MILLER: No notes. No notes. No  
14 notes to tell us when -- what time the pack -- what  
15 time he -- the package was brought into his office,  
16 what time that --

17 THE COURT: Counsel, asked and  
18 answered. You've already covered all that.

19 MR. MILLER: Okay. Okay.

20 (Whispered conversation)

21 BY MR. MILLER:

22 Q Yeah. You don't have any physical evidence  
23 about -- to make sure I'm clear, it's your testimony,  
24 you don't have any physical evidence about that the  
25 dog ever sniffed these packages. You took no

1 photographs, nothing like that, right? All the  
2 packages and the dog being exposed to packages, right?

3 A No.

4 Q Okay.

5 MR. MILLER: Okay. No further  
6 questions, Judge, at this time.

7 THE COURT: Mr. Tulante, it's your  
8 redirect examination?

9 MR. TULANTE: Yeah. I promise to be  
10 brief.

11 THE COURT: Take your time.

12 REDIRECT EXAMINATION

13 BY MR. TULANTE:

14 Q Inspector McStravick, were records to  
15 Exhibits B and C -- those are the search warrant  
16 paperwork for the packages ending in 391 and 581. Do  
17 you see those?

18 A Yes, sir.

19 Q As of 9:20 p.m., where were those two  
20 parcels? 9:20 p.m. on November 13, 2013. Where were  
21 those parcels?

22 A Those parcels were located in my office  
23 which is within the Eastern District of Pennsylvania.

24 Q As of the same time, same date, had the drug  
25 detection dog been exposed to them? Had they been

1 exposed to the dog?

2 A Correct. Prior to this date and time, the  
3 drug detection dog was exposed.

4 Q And roughly, when was that?

5 A It may be --

6 MR. MILLER: Objection.

7 A -- fifteen, twenty minutes.

8 MR. MILLER: This is speculation,  
9 Judge.

10 THE COURT: Sustained.

11 MR. TULANTE: Your Honor, no further  
12 questions.

13 THE COURT: All right.

14 RECROSS-EXAMINATION

15 BY MR. MILLER:

16 Q And, sir, you are giving that time of 9:20  
17 of the packages being in your office, you're doing  
18 that based upon, in part, the postal data records. Am  
19 I correct?

20 A I'm giving that testimony based on me being  
21 in my office, personally looking at the parcels, two  
22 parcels, in my office prior to 9:20 p.m. on 11/13.

23 Q And so, it's based on your word alone. You  
24 have no notes. You have no pictures. You have  
25 nothing. Am I correct?

1 THE COURT: Sustained, counsel.

2 MR. TULANTE: Objection.

3 MR. MILLER: All right. No further  
4 questions.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 MR. TULANTE: Your Honor, the  
8 government rests for purposes of this hearing.

9 THE COURT: All right. Mr. Miller?

10 MR. MILLER: Yes, Your Honor. If I  
11 may, Your Honor, I would call the witness that had --  
12 we subpoenaed. That would be Officer -- I believe  
13 Detective Kelliher. I believe that's her name. She's  
14 from the Bensalem -- she's actually the dog handler.

15 MR. TULANTE: Your Honor, we object for  
16 the reasons we've articulated.

17 THE COURT: Now, Mr. Miller, do you  
18 have a copy of the communication that was sent to this  
19 Court dated September 8th, 2014?

20 MR. MILLER: On yesterday? No, I don't  
21 have a copy of that. No, sir.

22 THE COURT: It appears that it cc'd  
23 Robert Miller, Esquire.

24 MR. MILLER: I see.

25 THE COURT: This communication



1 regarding the government opposition to the  
2 introduction of this witness.

3 MR. MILLER: I don't have a copy of it,  
4 Judge. I didn't get a copy of it. Since yesterday --  
5 I didn't -- I mean, it was e-mailed to me or  
6 something?

7 THE COURT: I don't know.

8 MR. MILLER: I don't -- it says "cc".  
9 I don't know -- maybe it was mailed to me and I  
10 wouldn't have gotten it -- if it went through the U.S.  
11 mail. But maybe if it was e-mailed to me, then I  
12 haven't checked my e-mail, Judge. I've been reviewing  
13 the documents in this case, looking at timelines and  
14 things like that and preparing for today.

15 THE COURT: Mr. Tulante?

16 MR. TULANTE: Yes, Your Honor. I'm  
17 trying to pull up a copy. I sent a copy to counsel at  
18 the same time I transmitted it to your deputy  
19 indicating our objection to Detective Kelliher's  
20 testimony.

21 THE COURT: Do you have a copy of it  
22 now?

23 MR. TULANTE: I have a copy here, Your  
24 Honor. I was going to give it to defense counsel to  
25 make sure he sees that I transmitted it to him.

1 MR. MILLER: Judge, I don't know what  
2 it says but I can tell you why I subpoenaed her. And  
3 I don't know if he states in his letter why I  
4 subpoenaed --

5 THE COURT: Just one second. Just a  
6 minute.

7 (Pause)

8 THE COURT: Mr. Miller?

9 MR. MILLER: Yes, sir?

10 THE COURT: Umm --

11 MR. MILLER: Yes, sir, Your Honor. I'm  
12 just checking my e-mail right now.

13 MR. TULANTE: 11:04 a.m.

14 MR. MILLER: 11:04 a.m.?

15 MR. TULANTE: Yeah, yesterday.

16 MR. MILLER: On yesterday? In fact, I  
17 was in court yesterday at that time, Judge. Down in  
18 state court.

19 THE COURT: But it didn't disappear  
20 from your device, did it?

21 MR. MILLER: No. It's here. It is  
22 here, Judge.

23 THE COURT: What time does it state it  
24 was received on your device?

25 MR. MILLER: I'm going to check. It's

1 downloading now as an attachment.

2 THE COURT: All right. But the  
3 original e-mail bearing the attachment has to have a  
4 time and date on it. What time is that?

5 MR. MILLER: Oh, that's correct, Judge.  
6 I was trying to look at the letter. I'm sorry. I  
7 apologize.

8 THE COURT: All right. Go backwards in  
9 time for the record, please.

10 MR. MILLER: It says 11:04, September  
11 8th. Monday, September 8th at 11:04, 2014.

12 THE COURT: All right.

13 MR. TULANTE: And, Your Honor, just --

14 MR. MILLER: And that was -- that says  
15 -- I'm sorry. It looks like it went to Ms. Shabazz  
16 (sic). But evidently, I must have -- I didn't see the  
17 letter.

18 THE COURT: Well, as I have indicated,  
19 it says "cc".

20 MR. MILLER: I didn't see the cc.

21 THE COURT: You didn't get the cc?

22 MR. MILLER: No. I'm saying I didn't -  
23 - I don't see the cc on the page that I'm on now. I'd  
24 have to see the cc once I go to the actual document.  
25 And I didn't go there yet.

1 MR. TULANTE: But you received the  
2 document.

3 MR. MILLER: I received it, though,  
4 Judge.

5 THE COURT: All right.

6 MR. MILLER: I did receive it.

7 MR. TULANTE: And, Your Honor, the  
8 reason I didn't object to having --

9 THE COURT: That's all I wanted --

10 MR. TULANTE: Okay.

11 THE COURT: -- to just simply make sure  
12 that you sent it and it should have been received and  
13 it was, just wasn't opened by you.

14 MR. MILLER: That is correct, Judge.

15 THE COURT: All right. Now we're going  
16 to take a recess. I want you to look at it and be  
17 prepared to deal with the argument put forth by the  
18 government as soon as we come back and reconvene. All  
19 right?

20 MR. MILLER: Thank you, Your Honor.

21 THE COURT: Ten minutes.

22 MR. MILLER: Thank you, sir.

23 THE COURT: Thank you.

24 (Recessed at 3:06 p.m.; reconvened at 3:39 p.m.)

25 THE COURT: All right. Are we ready to

1 proceed?

2 MR. MILLER: Yes, sir, Your Honor.

3 THE COURT: And, Mr. Miller, have you  
4 had an opportunity to review the communication from  
5 counsel for the government dated September 8th, 2014?

6 MR. MILLER: Yes, I have, Your Honor.  
7 I want to thank the Court for allowing me the  
8 opportunity to review this and giving me time to  
9 review it with my client.

10 THE COURT: Surely. And to the secured  
11 party, sir, have you had an opportunity to review it?

12 THE DEFENDANT: Yes.

13 THE COURT: And did you fully discuss  
14 with your counsel?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you prepared to go  
17 forward at this time?

18 THE DEFENDANT: I am, yes.

19 THE COURT: I'm sorry?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Now let me hear  
22 your motion -- actually, let me hear the government's  
23 motion to bar this information actually.

24 MR. TULANTE: Yes, Your Honor. I think  
25 we try to lay out some detail in the letter that in

1 order for the defendant to try to offer some extrinsic  
2 evidence to challenge the voracity of the statements  
3 in the affidavit, he has to provide some -- either an  
4 offer of proof or some indicia, some reliable  
5 indication, that the material that's in the affidavit  
6 was incorrect, was false and materially false at that.  
7 And the issue here is that Detective Kelliher -- she's  
8 -- all she's going to be able to say is that I have a  
9 dog, the dog is certified. And what she'll testify to  
10 -- and again, unless the offer of proof suggests  
11 otherwise, is simply that the information that's in  
12 the affidavit was accurate and correct. And so, we  
13 don't see -- since this is a four corners analysis,  
14 unless this is one of the exceptions in Leon that  
15 there's some information in there that's a reckless  
16 disregard for truth, that he doesn't get the  
17 opportunity to call witnesses to challenge voracity of  
18 the statements in the affidavit unless he, in the  
19 first instance, gives the Court some indication of  
20 what it is this witness will say and why that is  
21 contradict -- contradicts the statements in the  
22 affidavit. So that's why we object.

23 I mean, just to be sure, Your Honor,  
24 she's here. She's available. But we don't -- we  
25 think her testimony should be barred.

1 THE COURT: And her name is?

2 MR. TULANTE: It's Detective Christine  
3 Kelliher, K-E-L-L-E-H-E-R (sic) -- I-H-E-R. I'm  
4 sorry.

5 THE COURT: All right. Mr. Miller?

6 MR. MILLER: Yes.

7 THE COURT: I'll hear from you --

8 MR. MILLER: Thank you.

9 THE COURT: -- in terms of -- well, to  
10 the extent that counsel for the government has  
11 submitted to the Court actually a written letter in  
12 opposition, the one that I've referenced dated  
13 September 8th, 2014, which I will make a part of this  
14 record and we'll refer to it as Defense  
15 Exhibit --

16 MR. TULANTE: Government's Exhibit --

17 THE COURT: No, I'm sorry.  
18 Government's Exhibit --

19 MR. TULANTE: Gov -- E.

20 THE COURT: E?

21 MR. TULANTE: Yes.

22 THE COURT: Very well. Within the  
23 letter, inter alia, and in pertinent part, counsel for  
24 the government cites the Franks v. Delaware decision  
25 regarding this process. And in addition thereto,

1 several cases that stand for the proposition that  
2 counsel has to make a showing here. And I read from  
3 the written communication, in pertinent part, as  
4 follows -- and this is from page 1:

5 MR. MILLER: Yes, sir.

6 THE COURT: "To obtain an evidentiary  
7 hearing or a Franks hearing, the Defendant must make  
8 'a substantial preliminary showing that a false  
9 statement knowingly and intentionally or with reckless  
10 disregard for the truth was included by the Affiant in  
11 the warrant affidavit' citing the United States v.  
12 Brown, 3 F.3d 673 676 (3rd Cir. 1993), quoting Franks,  
13 438 U.S. at 155-56."

14 Now based upon that case law, Mr.  
15 Miller, what is it that you wish to present that would  
16 fit within the parameters of this decision?

17 MR. MILLER: Well, Judge, thank you for  
18 asking that question. The bottom line is, is that the  
19 testimony of the government's witness, Mr. McStravick  
20 -- his testimony, basically, flies directly in the  
21 face of the government's own documentation that they  
22 submitted to the defense -- excuse  
23 me -- that they submitted to the defense. And the  
24 bottom line is -- and that is, I'm talking about the  
25 postal data records. And it flies directly in the



1 face.

2 I think that the Court or anybody would  
3 agree that a dog sniff is an essential element in  
4 regards to establishing probable cause. And just as  
5 we have originally stated that it would be impossible  
6 for the dog to have sniffed the package at 9 o'clock  
7 or thereabouts or even before that, okay, if the  
8 package didn't get here until 11 o'clock at night.  
9 And -- or until 11 o'clock. 11:06 to be exact. And  
10 that's specifically regarding package number 581.

11 And so, that, in and of itself, would  
12 be -- I would think lay the basis because I think that  
13 his testimony flies in the face of the documentation.  
14 He doesn't -- he's not -- in fact --

15 THE COURT: All right. You've made  
16 your point. Let me --

17 MR. MILLER: Well, I want to go a  
18 little further, Judge.

19 THE COURT: Go ahead.

20 MR. MILLER: In fact, after reading the  
21 letter, I -- we have a witness who can testify about -  
22 - of course, yes -- can testify about some of the  
23 things that are contained in the postal data records  
24 that the postal inspector knows nothing about.  
25 Someone who's been a postal inspector for over

1    eighteen years. And he's here. And he's been waiting  
2    all day to testify. We'd like to call him. And that  
3    will show that things specifically in regards to  
4    container generated that appears on the postal data  
5    records, what that actually means. And his  
6    explanation will fly in the face of what was testified  
7    to here today by the postal inspector. And, Judge,  
8    and that is -- that is -- I believe that will be at  
9    least a preliminary showing, as it stated here, that a  
10   false statement knowingly and intentionally or with  
11   reckless disregard for the truth was included. That,  
12   in other words, that this package didn't get there.  
13   Item number 581 didn't get to Philadelphia until 11  
14   o'clock. And it would be impossible for the dog to  
15   have sniffed it.

16                    And that's why I want to call this  
17   witness, because, Judge, I filed a motion to compel.  
18   I asked for discovery. I have nothing but the  
19   conclusory facts that are contained within the  
20   affidavit of probable cause. But I'm making the  
21   allegation that there are material misstatements of  
22   fact based on at least nothing more than the  
23   documentation that I got from the assistant district -  
24   - assistant U.S. attorney.

25                    THE COURT: All right.

1 MR. MILLER: Okay? And the testimony  
2 of the -- Inspector --

3 THE COURT: All right.

4 MR. MILLER: -- the postal inspector.

5 THE COURT: All right. Mr. Tulante?

6 MR. TULANTE: Your Honor, I sat here  
7 and listened to Inspector McStravick's testimony and I  
8 really  
9 find -- I don't know what counsel is talking about in  
10 terms of any consistency between his addendum to  
11 Defense Exhibit A and what the testimony was by  
12 Inspector McStravick.

13 In the first instance, he says that  
14 this -- the 1103 scan was scanned by Inspector  
15 Vuzavorski (ph.) at his direction after the dog was  
16 placed -- the box was exposed to the dog and the dog  
17 and the dog gave a positive indication. So to the  
18 extent that he's citing some inconsistency, I  
19 don't -- there's none that exists.

20 Secondly, the --

21 THE COURT: Well, let me just stop you  
22 right there for purposes of a very clear record.

23 MR. TULANTE: Exactly.

24 THE COURT: Now, Mr. Miller, that's  
25 what I heard as well as in terms of the testimony

1 regarding the scan time and the order of things, in  
2 terms of the sniffing by the dog and the 11:30  
3 reference. Did you not hear that?

4 MR. MILLER: I heard also that he  
5 didn't know about the container generated issue on  
6 this. And --

7 THE COURT: That's -- no, wait. Wait.  
8 Let's not mix apples and oranges. Let's just take one  
9 thing at a time here.

10 MR. MILLER: Sure.

11 THE COURT: It's a fact.

12 MR. MILLER: Okay, yes, sir.

13 THE COURT: Now it is uncontroverted at  
14 this point in time regarding the times that he's  
15 articulating  
16 vis-a-vis the time when the dog made the sniffing  
17 process and the 11:30 reference, correct?

18 MR. MILLER: I would say that it flies  
19 -- it is contro -- it is contradicted based on the  
20 physical documents that we have in the case. I say  
21 that the container was scanned. Not a particular item  
22 singled out from that container. The document says  
23 container generated. It is their document. And so,  
24 therefore, we're going to have someone -- we have  
25 someone that we can put on the stand to further show,

1 make a preliminary showing, that the statements were  
2 false because if the container was generated and not a  
3 individual do -- individual piece of mail, that, in  
4 and of itself, and that the container was scanned.  
5 Not the mail. Not the doc -- not -- what was it --  
6 package 581, if the container was scanned. That flies  
7 in the face of what he's saying.

8 THE COURT: Mr. Tulante, do you  
9 understand the argument?

10 MR. TULANTE: I don't understand that  
11 argument, Your Honor.

12 MR. MILLER: Also, Judge --

13 MR. TULANTE: This is --

14 MR. MILLER: Also, Judge --

15 THE COURT: Mr. Miller --

16 MR. MILLER: -- there's a stream --

17 THE COURT: Mr. Miller -- Mr. Miller,  
18 just one second. I'll also give you time.

19 MR. TULANTE: Your Honor, I just want  
20 to take this one at a time because we first started  
21 talking about Detective Kelliher and then we moved on  
22 to, I believe, former Inspector Kellerman?

23 MR. MILLER: Katerman.

24 MR. TULANTE: Katerman. With respect  
25 to Detective Kelliher, the testimony she'll offer not

1 only will it not contradict what Inspector McStravick  
2 testified; it will merely corroborate it. And, you  
3 know, we're proceeding -- obviously, evidence has been  
4 heard. But it doesn't satisfy what the Franks  
5 procedure is for. It's for -- you identify falsity.  
6 You offer it to the Court that if this witness  
7 came -- were to testify, they would contradict. And  
8 that falsehood would be material and knowingly and  
9 intentionally made.

10 THE COURT: If you say that -- I  
11 understand that you're saying that. And I could  
12 accept that as an offer by government's counsel.

13 Mr. Miller is saying, no, she's not  
14 going to say that.

15 MR. TULANTE: Well, he --

16 THE COURT: She's my witness and I'm  
17 offering something else. And when two counsel offer  
18 opposing -- I mean, opposite proffers, the Court is  
19 fact finder, has to hear it and make a decision.  
20 Don't you think?

21 MR. TULANTE: Your Honor, it's his  
22 burden. He has to offer that proof. He has to --

23 THE COURT: Well, he's made the offer.

24 MR. TULANTE: -- be able to withstand  
25 this --

1 THE COURT: And you've made the  
2 counteroffer. And he's simply saying, Judge, let me  
3 show you.

4 MR. TULANTE: I don't think he's made  
5 that offer with respect to -- respectfully, Your  
6 Honor, with respect to Detective Kelliher.

7 THE COURT: Did you, Mr. Miller?

8 MR. MILLER: Well, Judge, yes. And I -  
9 - what I'm saying is also we have an inspector or  
10 prior inspect -- he used to be an inspector for over  
11 eighteen years. And if Mr. Katerman can come in here,  
12 then there's no question about the objection that's in  
13 this letter that I just read.

14 THE COURT: Well, again --

15 MR. MILLER: There's no question --

16 THE COURT: -- according to the case  
17 law, we're talking about --

18 MR. MILLER: I want to present that to  
19 --

20 THE COURT: -- making a -- the Court  
21 must then exercise -- excuse me. Let me do it this  
22 way. I'm reading from the case law. "An offer of  
23 proof contradicting the affidavit, including materials  
24 such as sworn affidavits or otherwise reliable  
25 statements from witnesses." Now to the extent that

1 you're offering a reliable statement from a witness,  
2 one witness would be the officer in charge of the dog.  
3 Is that correct?

4 MR. MILLER: Well, first --

5 THE COURT: I'll get to the other one.  
6 Just let -- one at a time.

7 MR. MILLER: Yes, sir, Your Honor.  
8 Yes, sir, Your Honor.

9 THE COURT: Is that one that you're  
10 proffering is going to contradict the testimony of the  
11 inspector here?

12 MR. MILLER: Yes, Your Honor,  
13 especially in light of the testimony that Mr. Katerman  
14 is going to testify to.

15 THE COURT: Mr. Katerman is an  
16 individual who you're going to -- or you're submitting  
17 or proffering as someone who can testify to custom?

18 MR. MILLER: Yes, in regards to  
19 experience and knowledge about the postal data system  
20 and how this is accurate. And they are alleging that  
21 it's not accurate. They're alleging that it didn't  
22 get to Philadelphia at 11 o'clock. They're alleging  
23 that it got to Philadelphia before 11 o'clock, before  
24 9 o'clock. That's what they're alleging.

25 THE COURT: All right.



1 MR. MILLER: He's going to testify that  
2 it  
3 is -- it is as it appears on this document.

4 THE COURT: All right. I've heard  
5 enough.

6 MR. TULANTE: Your Honor, can I --

7 THE COURT: Now, Mr. Tulante -- yes,  
8 sir.

9 MR. TULANTE: One final point. The  
10 Franks process allows the defense to challenge the  
11 voracity of the statements that are in the affidavit  
12 which were presented to the magistrate judge. Now  
13 what counsel is doing is he's identified an exhibit.  
14 And he just, frankly, just does not agree with the  
15 testimony he's heard from Mr. McStravick. And now he  
16 seeks to introduce extrinsic evidence to challenge the  
17 voracity of what's in this extrinsic document without  
18 speaking to the four corners of the affidavit. That's  
19 what I think Your Honor just read. You know, it has  
20 to be challenging what's in the affidavit because it's  
21 the affidavit that was presented to the magistrate.  
22 It's the affidavit that this Court has to evaluate  
23 whether or not --

24 THE COURT: All right.

25 MR. TULANTE: -- it was false.

1 THE COURT: Given that Mr. Miller's  
2 argument is that the affidavit is undermined by  
3 evidence he can produce such that it would be  
4 tantamount to the false or reckless representation.  
5 Is that correct, Mr. Miller.

6 MR. MILLER: That is absolutely  
7 correct.

8 THE COURT: All right. You cannot  
9 unring a bell. If I said to the defendant at this  
10 point in time, you can't present it and we go forward  
11 with this hearing and ultimately it's reviewed, the  
12 suggestion could be, Judge, all you had to do was just  
13 hear it and then make a decision as to whether or not  
14 it was admissible or relevant. You could always  
15 strike it because this is a suppression motion. This  
16 isn't in front of a jury. I'm going to therefore  
17 allow it subject to it being stricken. All right?

18 MR. TULANTE: All right. It's their  
19 witness.

20 THE COURT: Exactly. Go forward.

21 MR. MILLER: Thank you, Your Honor. I  
22 call Mr. Katerman.

23 THE COURT: All right.

24 MR. TULANTE: You want to take  
25 Detective Kelliher first?

1 THE COURT: I thought you --

2 MR. MILLER: No. I -- no. I'm calling  
3 Mr. Katerman to --

4 THE COURT: All right. It's not my --  
5 it's --

6 MR. MILLER: Yes.

7 MR. TULANTE: Okay. All right.

8 THE COURT: You put people on in the  
9 orders you wish to do it. You're defense counsel.

10 MR. MILLER: Your Honor, may I go out -  
11 -

12 THE COURT: Sure.

13 MR. MILLER: Thank you.

14 THE COURT: Is there any need to  
15 sequester the inspector or not?

16 MR. MILLER: I believe that he may be  
17 called on rebuttal and, yes, sir, Your Honor, yes, I  
18 would ask that he be sequestered.

19 THE COURT: All right. Thank you.

20 MR. MILLER: Thank you.

21 (Pause)

22 MR. MILLER: Your Honor, is it okay if  
23 the witness approach the --

24 THE COURT: Yes, sir.

25 MR. MILLER: -- the witness stand?

1 THE COURT: Go right ahead.

2 MR. MILLER: Thank you.

3 THE CLERK: Good afternoon, sir.

4 THE WITNESS: Good afternoon.

5 THE CLERK: May I ask you to provide  
6 your full name and spell it for the record?

7 THE WITNESS: Sure. Andrew, A-N-D-R-E-  
8 W, Charles, C-H-A-R-L-E-S, Katerman, K-A-T-E-R-M-A-N.

9 THE CLERK: Please raise your right  
10 hand.

11 ANDREW KATERMAN, WITNESS, SWORN

12 THE CLERK: Thank you, sir. You may be  
13 seated.

14 THE COURT: You may proceed.

15 MR. MILLER: And, Your Honor, before I  
16 proceed, I know that two witnesses are out in the  
17 hallway. And I don't know whether or not -- I'm sure  
18 that Inspector is familiar with sequestration rules  
19 but I would ask that it be emphasized that he not  
20 speak with --

21 THE COURT: Mr. Tulante, if you wish to  
22 have them brought in to the front door, I'll certainly  
23 admonish them not to have any discussions about their  
24 testimony.

25 MR. TULANTE: I can admonish them, Your

1 Honor.

2 THE COURT: I think it's probably best

3 --

4 MR. TULANTE: If -- yes, Your Honor.

5 THE COURT: -- that I do it on the

6 record --

7 MR. TULANTE: I will do so.

8 THE COURT: -- on myself. Thank you.

9 MR. MILLER: Thank you, Your Honor.

10 (Pause)

11 THE COURT: Good afternoon again. As

12 two prospective witnesses in this case, it is

13 incumbent upon me to advise you not to discuss your

14 testimony while you're out in the hallway. All right?

15 MS. KELLIHER: I understand.

16 THE COURT: And you may be accepted to

17 being called later on in the case. We would not want

18 to have any issues of anything like that at all. All

19 right?

20 MS. KELLIHER: Okay.

21 THE COURT: Thank you very much.

22 MR. MCSTRAVICK: Yes, Your Honor.

23 MR. MILLER: Thank you, Your Honor.

24 May I proceed?

25 THE COURT: Yes, sir. You may proceed.

1 DIRECT EXAMINATION

2 BY MR. MILLER:

3 Q Sir, would you at least identify yourself at  
4 this time?

5 A My name is Andrew Katerman.

6 Q And, Mr. Katerman, are you currently  
7 employed or how are you currently employed?

8 A I'm employed as a private investigator for  
9 an investigation firm out of Harrisburg, Pennsylvania.

10 Q Okay. And prior to that, how were you  
11 employed, sir?

12 A I was a postal inspector and a special agent  
13 for postal OIG for twenty-four years or something  
14 like, twenty-five years.

15 Q When you say OIG, what is OIG?

16 A Office of the Inspector General.

17 Q I see. Okay. And you say you were postal  
18 inspector for how long?

19 A Eighteen, nineteen years, something like  
20 that.

21 Q And you were with the Office of the  
22 Inspector General for how long?

23 A Five years.

24 Q I see. And during your time of service as a  
25 postal worker, did your duties ever carry you here to

1 the Eastern District of Pennsylvania?

2 A Yes.

3 Q I see. And what did those duties basically  
4 consist of?

5 A I did both mail theft and narcotics  
6 investigations in the Eastern District of  
7 Pennsylvania.

8 Q And that was as a postal inspector.

9 A As a postal inspector, that's correct.

10 Q I see. Okay. Now, sir, are you familiar or  
11 as a result of your experience as a postal inspector  
12 and with the Office of the Inspector General's office,  
13 are you familiar with postal data records -- are you  
14 familiar with postal data records?

15 A Somewhat, yes.

16 Q Okay. You say somewhat.

17 A There are certainly financial records that I  
18 am not familiar with. I do not do the audits in the  
19 post office and things like that. And there are  
20 inspectors that do that but I'm not familiar enough to  
21 be able to answer questions on audits and finances and  
22 things like that.

23 Q I see. But specifically, in regards to --  
24 specifically, in regards to tracking records --

25 A Yes.

1 Q -- tracking records of various pieces of  
2 various items that are in the mail stream.

3 A Yes. I have experience with tracking  
4 records, yes.

5 Q Okay. And what is the nature of that  
6 experience.

7 A Like I said, I was a postal inspector and I  
8 investigated narcotics in the Eastern District of  
9 Pennsylvania and in the Middle District. And we would  
10 watch parcels. We'd have target addresses that we'd  
11 be looking at. And you would take the tracking  
12 information off of the postal data records and you  
13 would ascertain that the suspect got more than one  
14 parcel or something like that even though you only saw  
15 one of them. And you'd realize that there's a  
16 continuing pattern here. And you identify that  
17 suspect as someone you wanted to look at further.

18 Q I see. And were you ever involved in the  
19 process of identifying the suspect packages?

20 A Absolutely.

21 Q Okay. And were you -- yeah, please.  
22 Explain that process. Yeah. Thank you.

23 A Okay. Well, simply, express mail labels  
24 come in multiple parts. And one of the parts is left  
25 with the center. One part is kept by the post office.



1 One part is retained by the addressee. Well, the part  
2 that is kept by the post office on --

3 Q Excuse me. I'm sorry. You said express  
4 mail?

5 A That was express mail, yes.

6 Q What about priority mail?

7 A Okay. Priority mail labels do not come in  
8 multiple parts like that. So you're just tracking  
9 data off of the website which is -- you're not able to  
10 compare handwriting and things like that to say that  
11 it looks similar. You're just looking for multiple  
12 parcels going to the same address.

13 Q I see. Are you able to see those parcels?  
14 See at least the label of those parcels prior to them  
15 -- while they're in the mail stream but prior to them  
16 getting to their destination?

17 A Not when I worked priority mail. We were  
18 not able to see the label, the actual handwritten  
19 labels before they were --

20 Q When did you work priority mail?

21 A I did not work narcotics after 2000.

22 Q 2000.

23 A Right. So it's been fourteen years or so  
24 since I --

25 Q Fourteen years. Okay.

1 A -- since I worked narcotics for the mail --

2 Q Okay.

3 A -- correct.

4 Q So now you were unable to -- unable to see,  
5 as far as your experience, the actual label.

6 A Correct.

7 Q But in regards to if you were able to see  
8 that label, you would be able to determine, before the  
9 package actually arrives at its destination, you would  
10 be able to determine whether or not that package -- or  
11 what would you be able to determine about that  
12 package?

13 A Well, I'm assuming we're talking about  
14 multiple packages going to the same address.

15 Q That's correct.

16 A That's why we're looking at these packages.

17 Q Or different addresses.

18 A Okay. Well then I'm not sure how I linked  
19 it to the second address other than perhaps  
20 handwriting that looked similar or they're from the  
21 same return address or something like that. I'm not  
22 sure how you're linking the multiple priority packages  
23 together.

24 Q Okay. Okay.

25 A Do you have the same -- do you actually know

1 that they're mailed within minutes of each other at  
2 the same post office in California or some place?

3 Q Okay. Now let me ask you this. Let me ask  
4 you this. If the postal data records -- if you were  
5 presented with the postal data records --

6 A Uh-huh.

7 Q -- what would that tell you about the  
8 whereabouts, the location -- let me say it like that -  
9 - and the time that a package would be actually  
10 received at various locations.

11 MR. TULANTE: Objection, Your Honor,  
12 only because postal data records can refer to one of  
13 hundreds or thousands.

14 THE COURT: Sustained.

15 BY MR. MILLER:

16 Q In regards to the postal product tracking  
17 system, are you familiar with that?

18 A Yes.

19 Q Okay. What does that system -- what could  
20 that system tell you? Or what did that system tell  
21 you?

22 A Well, it could tell you who actually  
23 operated the scanner. They scan the package as  
24 incoming and it would tell you what time the package  
25 was scanned. So you could identify multiple packages

1 mailed at the same clerk within, we'll say, seconds of  
2 each other or perhaps minutes of each other. So if  
3 the packages were mailed, we'll say, at 2:01, 2:02,  
4 2:03, 2:04 in the afternoon, it would be a reasonable  
5 guess to say that they're mailed by the same person.  
6 Then if you look at the handwriting on the labels and  
7 the handwriting appears similar on all four of those  
8 package, that would take you further down the path  
9 that it seems reasonable that the same person mailed  
10 those four packages even though you don't even have a  
11 picture of this person yet. It would be a reasonable  
12 suspicion.

13                   And then there are video cameras in  
14 many of the larger facilities in the metropolitan hubs  
15 in California. And that's mostly for robbery  
16 prevention. But we are able to take images off of  
17 those videos to see who mailers are on particular  
18 packages because now you know which clerk accepted it.  
19 You know which window that clerk worked at, so you can  
20 say it's the person that's at the window all the way  
21 to the left. And you can see that the same person  
22 stands there and mails multiple packages and that's  
23 how you would be able to link those multiple packages  
24 together.

25           Q     I see. But from the postal data records,

1 would you be able to tell the time that a package was  
2 mailed?

3 MR. TULANTE: Your Honor, just the same  
4 objection with respect to postal data records.

5 THE COURT: Sustained.

6 MR. MILLER: Well, I'm sorry.

7 BY MR. MILLER:

8 Q Postal -- the product tracking system --

9 A Yes.

10 Q -- utilized by postal inspectors.

11 A Yes.

12 Q Would you be able to tell -- would you be  
13 able to trace a package, first of all?

14 A Well, you can tell the time the package is  
15 mailed. And you can see all the scans that it goes  
16 through in round. And you can see that packages are  
17 mailed -- where they're mailed and what time they're  
18 mailed or actually, you're seeing what time they're  
19 scanned which is supposed to be the same thing but it  
20 sometimes isn't exactly the same thing.

21 Q Okay. Now let me ask you this. Let me ask  
22 you this. Are you familiar with the scanner ID?

23 A Yes.

24 Q Okay. What is that?

25 A That identifies which gun the guy is

1 pointing at the package in order to get the scanner --  
2 the bar code information off of it. And that will  
3 then work backwards and tell you which post office it  
4 was mailed -- was scanned at. And then will tell you  
5 further which clerk actually held the scanner in his  
6 hand in order to scan that package.

7 Q Not tell me just exactly, how would that  
8 number tell you what employee or whatever was the one  
9 that actually scanned the package?

10 A I would have to call the post office. If I  
11 call the post office and say this is the inspector  
12 from the east coast and I want to know who operated  
13 scanner 123 on Tuesday, July 1st, they'll tell me.

14 Q So if a person just laid the scanner down,  
15 somebody else, another employee, could pick it up and  
16 scan it?

17 A Conceivably. But in general, they're  
18 assigned to a person. Or, they're actually assigned  
19 to a job. And there's one person assigned to that  
20 job.

21 Q Okay. And do postal inspectors --

22 THE COURT: Excuse me one second.

23 Q -- man the scanners?

24 THE COURT: Excuse me one second. Now  
25 when you make that statement, you're making that

1 statement as to what occurred fourteen years ago?

2 THE WITNESS: That's correct. I have  
3 not investigated this type of operation in the last  
4 fourteen years. That's correct, Your Honor.

5 THE COURT: All right.

6 BY MR. MILLER:

7 Q Now when you said in the last fourteen  
8 years, I have a copy of your resume. It says postal  
9 inspector, U.S. Postal Service, 1989 to 2006, am I  
10 correct?

11 A Correct.

12 Q Okay. So you were a postal inspector during  
13 that -- up to 2006.

14 A Up to 2006. The last six or so years, I did  
15 not work narcotics through the mail.

16 Q You didn't work narcotics.

17 A That's correct.

18 Q But you were still familiar with --

19 A I was still --

20 Q -- the product tracking system.

21 A Absolutely.

22 Q Okay.

23 A That's correct.

24 Q So your statements about the product  
25 tracking system are -- is accurate up to at least

1 2006, am I correct?

2 A I'll even go through my retirement from the  
3 Office of the Inspector General, yes, because I  
4 continually had data that I researched through the  
5 tracking system.

6 Q So as a result of you being involved in the  
7 -- you were in the Office of -- the Inspector  
8 General's office up till 2011, am I correct?

9 A That's correct.

10 Q And so, during that time, up till 2011, you  
11 still -- or did you -- did you still --

12 A Yes.

13 Q -- use the postal --

14 A Yes.

15 Q -- product tracking system?

16 A Yes.

17 Q You did? Okay. So let me just ask you  
18 this. When it talks about the method of input on a  
19 product tracking system record, what does that mean?

20 A Normally, they're scanned. But you can  
21 input a manually -- if there's a problem with the  
22 scanner or something like that.

23 Q Okay. And when it talks about event time,  
24 what does that usually mean?

25 MR. TULANTE: Your Honor, may I



1 interject? I think it'd make things easier if we're  
2 talking from the same document. I know that counsel  
3 is reading from a document. I don't know if his  
4 intention is to offer it for the witness.

5 MR. MILLER: Oh, I do absolutely but  
6 I'm --

7 MR. TULANTE: Okay.

8 MR. MILLER: But I'm just going over  
9 categories that are on this document, Your Honor.

10 THE COURT: For now, objection's  
11 overruled.

12 BY MR. MILLER:

13 Q When it talks about the event time, are you  
14 familiar with that aspect of the product tracking  
15 systems?

16 A Yes, I am. That would be -- if you're  
17 scanning it and you're seeing it arrive in  
18 Philadelphia, the event time would be the time of the  
19 arrival in Philadelphia.

20 Q I see. And when you say the time of the  
21 arrival, would that be, oh, after it gets to the  
22 airport and then maybe an hour or two later? Or would  
23 that be when it gets -- if it's priority mail, would  
24 that be when it gets to the airport or at some other  
25 remote location?

1           A       It would probably be the time the container  
2 holding the packages is rolled off the airplane.

3           Q       And why do you say probably?

4           A       My experience is that that's how it would  
5 be.

6 The -- it could conceivably be something else if  
7 someone forgot to scan something or someone didn't do  
8 something in accordance with procedures. But the  
9 procedures would be that it would be the time that the  
10 container transfers from the airport employee to the  
11 postal employee who now has the mail in his control  
12 again.

13          Q       Okay. So --

14                   MR. MILLER: If I may approach, Your  
15 Honor, and at least let him --

16                   THE COURT: Yes, sir.

17                   MR. MILLER: Let me see -- yeah. I  
18 think they are.

19                   THE WITNESS: There's a stack of  
20 documents up here.

21                   MR. MILLER: Okay. If I may approach,  
22 Judge --

23                   THE COURT: Yes. Go right ahead.

24                   MR. MILLER: -- I believe that would be  
25 the addendum --

1 THE COURT: Go right ahead.

2 MR. MILLER: I'm just looking -- yes.

3 BY MR. MILLER:

4 Q I would like to --

5 MR. MILLER: If I may, Your Honor.

6 BY MR. MILLER:

7 Q I'd like to direct your attention to what's  
8 been marked for identification purposes as the  
9 addendum of Defense Exhibit B -- I'm sorry -- Defense  
10 Exhibit A.

11 A Okay. Of D-A, got it. Okay.

12 Q Okay. Okay. Do you recognize that document  
13 in any kind of way, shape or form?

14 A Yeah. It's a typical tracking sheet from a  
15 parcel for -- from the tracking confirm system of the  
16 postal service. I see it's marked U.S.A. Simmons  
17 0857. So I'm going to guess it's the same one that we  
18 had viewed earlier.

19 Q Okay. Let me ask you this. Do you see the  
20 column where it says "Input Method"? That would be --  
21 I believe that's on page 1 of that document. Yes.

22 A Yes.

23 Q And then I would like to direct your  
24 attention to the date of November the 13th, 2013, the  
25 event time, 23:06. I believe that's --

1 A Um-hmm.

2 Q Okay. What does that mean to you?

3 A What does "Input Method" mean then?

4 Q No. What does the event time mean to you?

5 A 23:06 is 11:06 p.m.

6 Q I see. And where it says "Input Method" --

7 A It says "Container Generated".

8 Q What does that mean to you?

9 A That means, like I was talking about, when  
10 the container rolled off the airplane and it was full  
11 of, we'll say, fifty parcels, they scanned the outside  
12 of the container and that scan then instantly appears  
13 on all fifty of those parcels as having arrived in  
14 Philadelphia all at the -- all at one time from one  
15 scan.

16 Q And this was your experience not just as a  
17 postal inspector but also as a member of the office of  
18 Inspector General up to 2011?

19 A That's correct.

20 Q With regard to -- you made a statement and I  
21 want to make sure that I'm clear on this, that this  
22 information would be something that would be inputted,  
23 for lack of a better term, by a postal employee. Am I  
24 correct?

25 A Yes.

1 Q Okay. Is it your experience that -- or was  
2 it your experience that these doc -- that these  
3 containers would be removed from an airplane or  
4 received here in Philadelphia at the airport by people  
5 that are other than postal employees?

6 A No. They'd be rolled off the airplane by  
7 the airline employees because --

8 Q Okay.

9 A -- the postal employees weren't allowed in  
10 the airlines. It's one of those union things. And  
11 then once they actually got into -- onto the tarmac  
12 and close to the building, the postal employee would  
13 take control of them. But there was a point where  
14 they were under the control of an airline employee  
15 before they actually came into the control of the  
16 postal employee.

17 Q Now as a postal inspector, is it -- has it  
18 been your experience that a package would be taken  
19 from the airport and driven to a remote location, a  
20 distribution point, other than at the -- other than at  
21 the airport that would -- and then it be scanned there  
22 hours later?

23 A Taken out of that container? Is that what  
24 you're saying?

25 Q Taken out of that container and taken to a

1 remote location and scanned hours after it leaves the  
2 airport.

3 A No. Why would you do that?

4 Q Well --

5 A I'm sorry. It's not my -- I'm not supposed  
6 to be asking questions.

7 Q Okay.

8 THE COURT: Thank you very much.

9 THE WITNESS: I apologize.

10 MR. MILLER: Okay. Okay. Okay. Okay.  
11 Okay.

12 THE WITNESS: Sorry, Your Honor.

13 BY MR. MILLER:

14 Q Okay. Let me ask you this. In regards to  
15 the time, you're saying why would you do that. But if  
16 a package was received here -- okay. Let me make sure  
17 -- if a package was received here in Philadelphia at  
18 11 o'clock in the evening, is it conceivable that that  
19 package -- or scanned in on the product tracking  
20 system at 11:00 p.m., is it conceivable that that  
21 package actually arrived at 6:00, 7:00 or 8:00 -- 6 or  
22 7 or 8:00 that same evening?

23 A Well, it could --

24 MR. TULANTE: Your Honor, I don't --  
25 object -- I don't know what the question is.

1 MR. MILLER: Okay. Let me ask it like  
2 this.

3 THE COURT: Sustained.

4 BY MR. MILLER:

5 Q Okay. Let me ask you this. In regards to -  
6 - I believe it's pack -- I would like to direct your  
7 attention. I believe this is Government -- the packet  
8 that's marked Government Exhibit B. Let me double  
9 check here. Excuse me. Let me double check.

10 A It's a priority mail parcel that ends in  
11 391?

12 Q That's correct.

13 A Okay.

14 Q Okay. Okay. Do you have that product  
15 tracking record?

16 A I have -- I have Government Exhibit B. Yes.

17 Q Okay. Okay. Do you see -- do you see a  
18 product tracking system record for a package that ends  
19 in 391?

20 A No. I have three -- four applications --  
21 three applications for search warrants -- four  
22 applications for search warrants --

23 Q Let me say it like this.

24 A -- a stack of e-mails.

25 Q Let me direct your attention to Defense

1 Exhibit A.

2 A Oh. Yes.

3 Q Okay. And then in that package, do you see  
4 anything that pertains to the product tracking system  
5 for Exhibit (sic) 391. It would be the last three --

6 A The tracking number on Defense A is 581.  
7 The last three is 581.

8 Q Okay. Do you see -- that's the addendum.  
9 And the package that has other documents that are  
10 collectively marked as Defense Exhibit A --

11 MR. MILLER: May I approach, Judge?

12 THE COURT: Yes, sir.

13 MR. MILLER: Thank you.

14 THE WITNESS: I have a couple that  
15 aren't marked. And I have Government's Exhibit --

16 MR. MILLER: That's the government's.

17 THE WITNESS: Okay. These are all  
18 government's and there's this one.

19 MR. MILLER: I don't know -- yes. This  
20 is it.

21 THE WITNESS: Okay. It's not marked.

22 MR. MILLER: It's not marked. I  
23 apologize. And it would be -- I want to direct your  
24 attention to it for one more second. Put that here.  
25 Exhibit 2. 391. There we go. I'm sorry.



1 THE WITNESS: Okay.

2 MR. MILLER: It's the third page of  
3 that packet.

4 THE WITNESS: 391.

5 MR. MILLER: Yes, sir.

6 THE WITNESS: Yes. Got it.

7 MR. MILLER: Okay.

8 BY MR. MILLER:

9 Q Now the -- I want to go to -- it's going to  
10 be 1, 2, 3, 4, 5. That would be five from the bottom  
11 -- five from the bottom where it talks about in-log  
12 processing and it gives a time of 23:10 on November  
13 the 13th, 2013. Do you see that?

14 A I see the date and it could be 23:18 or  
15 23:10. It's a little tough to read on my copy.

16 Q It is. It is.

17 A Okay.

18 Q And do you see that it was -- the location  
19 of where that was scanned?

20 A It was scanned in Belmar, New Jersey.

21 Q I see. And do you see the input method?

22 A It says "Scanned" and then it gives the  
23 scanner ID.

24 Q Okay. And do the postal inspectors have  
25 scanner ID numbers?

1 A Not to the best of my knowledge.

2 Q Did you ever have a scanner ID?

3 A I never had a scanner ID.

4 Q Did any of your colleagues have scanner ID  
5 numbers?

6 A No.

7 Q Okay. If the -- would it -- is it -- let me  
8 ask you like this. Is it possible that a package  
9 would come from California to New Jersey directly --  
10 to Belmar, New Jersey directly?

11 A No.

12 MR. TULANTE: Your Honor, objection. I  
13 mean, he's asking -- he's asking him to sort of  
14 speculate.

15 MR. MILLER: Well --

16 MR. TULANTE: This is a witness.

17 MR. MILLER: Well, well, well --

18 THE COURT: Counsel --

19 MR. TULANTE: And I've reserved it --

20 THE COURT: Counsel, rephrase the  
21 question. Sustained.

22 MR. MILLER: All right. Yes.

23 BY MR. MILLER:

24 Q Well, when somebody in Philadelphia scanned  
25 the package in Belmar, New Jersey, somebody in

1 Philadelphia scanned a package in Belmar -- Belmar,  
2 New Jersey.

3 MR. TULANTE: Objection, Your Honor.

4 THE COURT: Sustained.

5 THE WITNESS: And --

6 THE COURT: Sustained.

7 BY MR. MILLER:

8 Q Is that possible?

9 MR. TULANTE: Your Honor, same  
10 objection?

11 THE COURT: Sustained.

12 BY MR. MILLER:

13 Q Now --

14 THE COURT: Counsel, let me just, for  
15 the record, first of all, the witness is not  
16 testifying from his own personal knowledge about  
17 anything involved in this, correct?

18 MR. MILLER: No. That is correct,  
19 Judge, about personal knowledge, about any -- but he  
20 is -- let me take that back. He's testifying about  
21 personal knowledge that he has of the product tracking  
22 system as of -- as late as 2011.

23 THE COURT: No. I understand that.

24 MR. MILLER: Yes, sir. Yes, sir.

25 THE COURT: And that's a different

1 issue in terms of expert witness versus whatever you  
2 can offer for him, what capacity. My question simply  
3 is, is that you're asking him question about  
4 possibilities on the date of November 13th of 2013  
5 where he cannot testify and observing anything from  
6 his personal knowledge.

7 MR. MILLER: That is correct, Judge,  
8 based on his own personal knowledge of being present  
9 at the time that this was scanned.

10 THE COURT: All right.

11 MR. MILLER: But from his own personal  
12 knowledge in regards to how things are done in the  
13 postal system --

14 THE COURT: How things were done when  
15 he was last there.

16 MR. MILLER: In 2011 even as an  
17 inspector general.

18 THE COURT: All right. No. The  
19 question about it is it possible for something to go  
20 from Santa Clara, California to Belmar, New Jersey --  
21 I'm sure you're talking about by airplane. There's no  
22 airport like Philadelphia International Airport --  
23 International Airport.

24 MR. MILLER: Well, let me -- if I may  
25 rephrase the question.

1 THE COURT: Go ahead.

2 MR. MILLER: Okay.

3 BY MR. MILLER:

4 Q With regards to this particular -- well,  
5 this particular line item, if you want to call it  
6 that, it indicates that this package was scanned --  
7 the location was Belmar, New Jersey. Do you see that?

8 A We're back at 23:10, five lines up from the  
9 bottom.

10 Q That's correct. Yes, sir.

11 A Yes.

12 Q Okay. You see that? Now the line just  
13 below that says Santa Clara, California. Do you see  
14 that, "En Route Processing"?

15 A Yes.

16 Q All right. Do you see that?

17 A Yes.

18 Q Okay? Okay. There's nothing in here that  
19 indicates that that product was scanned in  
20 Philadelphia. Am I correct?

21 A That's correct.

22 Q Nothing on this postal tracking system that  
23 indicates that article was scanned ever in  
24 Philadelphia, right?

25 A Assuming that's the whole tracking, yes, I

1 agree.

2 Q And by 11:10 on the 13th, based on your  
3 knowledge of the postal tracking system and what this  
4 document indicates, where is the package at 11:10 p.m.  
5 on the 13th of November 2013?

6 A It's in Belmar, New Jersey right next to  
7 scanner, whatever that says, APPS 201.

8 Q Okay.

9 A 901? I don't know what it says.

10 Q Now, sir, let me just ask you this question.  
11 I want to try to change gears from the tracking  
12 system. In regards to -- were you present regarding  
13 any of the exposure of K9 to items that were in the  
14 U.S. mail system?

15 MR. TULANTE: Your Honor, objection --

16 THE COURT: Sustained.

17 MR. TULANTE: -- to relevance.

18 THE COURT: Sustained.

19 BY MR. MILLER:

20 Q Well, can you tell us about the policies and  
21 procedures that were utilized while you were there and  
22 the postal inspector's office and in the inspector --  
23 Office of the Inspector General in regards to suspect  
24 packages?

25 MR. TULANTE: Your Honor, objection.

1 THE COURT: Sustained.

2 MR. TULANTE: Same grounds.

3 MR. MILLER: Well, Judge, I would like  
4 to offer him as an expert. I have given the assistant  
5 U.S. attorney a copy of my client's -- I'm sorry --  
6 not of my client but of my witness' curriculum vitae.  
7 And I don't know if the Court would like to have a  
8 copy. But I would like to offer him as an expert and  
9 offer him to be even cross-examined in regards to his  
10 expertise if necessary, if the U.S. attorney wants to,  
11 to cross-examine him in regards to his expertise as an  
12 expert of eighteen years --

13 THE COURT: The Court is ruling that it  
14 is irrelevant. You have an exception?

15 MR. MILLER: Thank you.

16 BY MR. MILLER:

17 Q So --

18 MR. MILLER: Court's indulgence. One  
19 moment.

20 THE COURT: Surely.

21 MR. MILLER: Just very briefly, Judge.

22 THE COURT: Take your time.

23 (Pause)

24 BY MR. MILLER:

25 Q Let me just make sure I'm clear in regards

1 to just two points. Looking at the postal tracking  
2 system for postal track -- product tracking system  
3 records for the package or the parcel ending in 581.  
4 Do you see that?

5 THE COURT: Counsel, what are you  
6 referring to?

7 THE WITNESS: Addendum --

8 MR. MILLER: The postal tracking system  
9 in -- that would be in -- that would be in the  
10 addendum, Judge, the addendum that --

11 THE COURT: All right. Just a second,  
12 please.

13 MR. MILLER: Yes, sir. And it's the  
14 first page on the addendum. I apologize.

15 THE COURT: All right.

16 BY MR. MILLER:

17 Q Do --

18 A I got it, yes.

19 Q You have it. Okay. Great. All right. Let  
20 me make sure I'm clear. The container -- the portion  
21 that says "Input", it says "Container Generated" and  
22 you said that means that it was scanned in a  
23 container. Am I correct?

24 MR. TULANTE: Your Honor, objection.  
25 Asked and answered.



1 THE COURT: Sustained.

2 BY MR. MILLER:

3 Q And it also -- the time or the 11:23, what  
4 does that mean to you?

5 MR. TULANTE: Your Honor, same  
6 objection.

7 THE COURT: Wait a minute. 11:23?

8 MR. MILLER: I'm sorry. 11:06. 23:06.

9 THE COURT: All right. For "Container  
10 Generated", it says 23:06.

11 MR. MILLER: Yes.

12 THE COURT: But that's not --

13 MR. MILLER: I changed that -- I should  
14 say 11:06 or --

15 THE COURT: All right.

16 MR. MILLER: -- 11:06 p.m. or 23:06.

17 THE COURT: But in terms of the  
18 underlying what does that mean, that is asked and  
19 answered by reason of the previous question. So the  
20 objection is sustained.

21 MR. MILLER: I just want to make sure  
22 I'm understanding this correct, Judge. But, yes, and  
23 I apologize.

24 BY MR. MILLER:

25 Q Bottom line, these records -- that

1 particular record, does it mean that this package was  
2 in a container in Philadelphia and was scanned at  
3 11:06 p.m.?

4 MR. TULANTE: Objection, Your Honor.

5 THE COURT: Overruled. You can answer  
6 the question if you know.

7 THE WITNESS: The document indicates  
8 that the package was, in fact, in a container and the  
9 container was at the Philadelphia airport on 23:06 on  
10 November 13.

11 MR. MILLER: I have no further  
12 questions, Your Honor.

13 THE COURT: All right.

14 MR. TULANTE: Judge, may I?

15 THE COURT: Counsel?

16 CROSS-EXAMINATION

17 BY MR. TULANTE:

18 Q Good afternoon, Inspector.

19 A Good afternoon.

20 Q I don't know if you still get called  
21 "inspector" but --

22 A It's all right.

23 Q -- how ever you want to be addressed.

24 It's fair to say that you -- it's been fourteen  
25 years since you participated in narcotics with the

1 inspection service, is that right?

2 A That is correct.

3 Q And as they say in drug investigations,  
4 that's a lifetime, isn't it?

5 A Absolutely.

6 Q Things change, investigator type things  
7 change?

8 A Absolutely.

9 Q And one of the things it sounds like changed  
10 since you last did that was when you were  
11 investigating drug crimes, you weren't able to get the  
12 images from priority mailboxes, is that right?

13 A That is correct.

14 Q In fact, you typically, the way you  
15 investigated these boxes, these priority mailboxes,  
16 you had a target address that you were looking for, is  
17 that right?

18 A That is correct.

19 Q While you're looking for -- when people mail  
20 multiple boxes from the same post office.

21 A Or target mail, that's correct.

22 Q And you understand that's not the technique  
23 involved in this case, is that right?

24 A That is correct.

25 Q And, in fact, when you were --

1 MR. MILLER: Judge, I'm going to object  
2 in regards to that's not the technique of target  
3 mailing. I'm going to object to that. I think it's -  
4 -

5 THE COURT: Overruled. The witness can  
6 answer the question.

7 MR. MILLER: Okay.

8 BY MR. TULANTE:

9 Q Well, let me ask this way. Are you familiar  
10 with how the postal inspectors in this case were able  
11 to target this priority mailboxes?

12 A I am not.

13 Q And you weren't aware that -- of any search  
14 by credit cards, anything like that?

15 A Nope.

16 Q No? And when you were actually an  
17 investigator, it's -- and tell me if I'm wrong. I  
18 often am wrong. When you were an investigator, it's  
19 fair to say that you spent a lot of your time in the  
20 Middle District, in Harrisburg, right?

21 A Correct.

22 Q As opposed to Philadelphia and Philadelphia  
23 International Airport.

24 A I covered all of the Middle District of  
25 Pennsylvania. And I did not do Philadelphia or the

1 five surrounding counties. So I did the Allentown  
2 area and the Reading area which was still Eastern  
3 District.

4 Q It's still a lot of work as far as that.

5 A Yes.

6 Q And when you discuss what would happen when  
7 containers -- packages come to Philadelphia, that's  
8 based on your knowledge as of 2000, is that right,  
9 what happens in the Philadelphia International  
10 Airport?

11 A Yes, what happens in the airport, yes.

12 Q So you have nothing -- you have no specific  
13 knowledge about what happens now, is that right?

14 A Not as of today, no. I have done cases that  
15 involve mail theft, that involve employees on  
16 airplanes and the handling between the tarmac and the  
17 building since then. But nothing obviously in the  
18 last three years.

19 Q And so, you don't know -- you can't tell the  
20 Court whether, as of November 13, 2013, how packages  
21 were received at the airport.

22 A That's correct.

23 Q And your -- just so we're clear, your  
24 testimony regarding the product tracking systems for  
25 these two boxes, the 391 and 581 --

1 A Right.

2 Q And that's -- again, that's based on what  
3 your knowledge of this from years ago, is that right?

4 A The form looks essentially the same. I  
5 would say that they -- it probably means the same  
6 thing.

7 Q And just to be clear, you don't know  
8 Inspector McStravick, is that right?

9 A I do not.

10 Q And you have --

11 A I was retired before he was hired.

12 Q And you have no personal knowledge about  
13 this investigation, is that correct?

14 A Not before I met Mr. Miller.

15 MR. TULANTE: Okay. Your Honor, I have  
16 no further questions.

17 THE COURT: Thank you very much.  
18 Anything further?

19 MR. MILLER: Just very -- one or two,  
20 that's it.

21 REDIRECT EXAMINATION

22 BY MR. MILLER:

23 Q Is there anything about the postal tracking  
24 record -- postal tracking system documentation that's  
25 before you that you're unfamiliar with?

1 A No.

2 Q Is there anything about the product tracking  
3 system documentation that's before you that you had no  
4 experience with as a result of your employment as a  
5 postal inspector and as an employee with the Office of  
6 Inspector General?

7 A No. It appears the same. There's nothing  
8 on there I would say I don't know what it is.

9 Q Are you -- were you ever familiar with that  
10 term "Container General" -- I'm sorry -- "Container  
11 Generated"? Were you ever -- are you familiar with  
12 that term?

13 MR. TULANTE: Your Honor, that's --

14 THE COURT: Sustained.

15 MR. MILLER: All right. No further  
16 questions.

17 THE COURT: You may step down. Watch  
18 your step, please.

19 THE WITNESS: Sure.

20 THE COURT: Mr. Miller?

21 MR. MILLER: Judge, I would like to  
22 call Detective Kelliher.

23 THE COURT: You may proceed.

24 MR. MILLER: Thank you. May I, Judge?

25 THE COURT: Yes, sir.

1 MR. MILLER: Thank you.

2 (Pause)

3 MR. MILLER: Your Honor, with the  
4 Court's permission, may the witness --

5 THE COURT: Certainly.

6 MR. MILLER: Thank you.

7 THE COURT: Please.

8 THE CLERK: May I ask you to please to  
9 provide the spelling your last name for the record?

10 THE WITNESS: Detective Christine, C-H-  
11 R-I-S-T-I-N-E, last name Kelliher, K-E-L-L-I-H-E-R.

12 THE CLERK: Would you raise your right  
13 hand, please?

14 DETECTIVE KELLIHER, WITNESS, SWORN

15 THE CLERK: Detective Kelliher, do you  
16 have a badge number?

17 THE WITNESS: 22207.

18 THE CLERK: Thank you. You may be  
19 seated.

20 THE COURT: You may proceed.

21 MR. MILLER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q Detective Kelliher, I have referred to you  
25 as Detective but you're detective with what political



1 -- what township?

2 A Bensalem Township.

3 Q Bens -- okay.

4 A Yes.

5 Q And what are your duties and  
6 responsibilities there as a detective?

7 A I'm assigned to the K9 unit and assigned to  
8 the DEA HIDTA Task Force Group 31.

9 Q Okay.

10 MR. TULANTE: And, Your Honor, just so  
11 that -- she used an acronym. I know Your Honor wants  
12 to have that unpacked.

13 MR. MILLER: I was about to --

14 THE COURT: Yes.

15 MR. MILLER: I was about to ask her --

16 THE WITNESS: I'm sorry.

17 THE COURT: Please. Thank you.

18 THE WITNESS: HIDTA is High Intensity  
19 Drug Trafficking Area.

20 THE COURT: Thank you.

21 BY MR. MILLER:

22 Q And let me ask you this. You were involved  
23 in the investigation in regards to this matter  
24 involving Mr. Simmons, am I correct?

25 A Yes.

1 Q Okay. Or the secured party, Mr. Simmons, am  
2 I correct?

3 A Yes.

4 Q Okay. Could you tell us what your  
5 involvement consisted of?

6 A My involvement consisted of some  
7 surveillance but, in the beginning, my drug detective  
8 dog was used to detect the odor of narcotics coming  
9 from several parcels.

10 Q Okay. You say your dog was utilized to  
11 detect?

12 A Yes.

13 Q Okay. Could you tell us what happened?  
14 What -- how did -- tell us what happened when your dog  
15 was utilized?

16 A My dog was presented three separate parcels  
17 all on separate occasions. When I cued her to search  
18 for drugs, she gave me some -- several indicators that  
19 she smelled the odor of narcotics. And upon putting  
20 her nose right on the box and sniffing the box, she  
21 gave me a final response that that is where the odor  
22 of the narcotics was coming from.

23 Q I see. Now you said there were three  
24 separate parcels that the dog gave that alert on?

25 A Yes.

1 Q Okay. Were there any other parcels present  
2 at the time that the dog --

3 A Yes.

4 Q -- gave the alert?

5 A Yes.

6 Q And where were they?

7 MR. TULANTE: Judge, I just want to  
8 clarify on which occasion.

9 THE COURT: Thank you.

10 BY MR. MILLER:

11 Q Okay. Well, let's start --

12 MR. TULANTE: Counsel's talking  
13 generally.

14 THE COURT: Thank you.

15 BY MR. MILLER:

16 Q When was the first -- let's start with, I  
17 believe it would be, parcel number ending in 072. Are  
18 you familiar with that particular parcel? Are you  
19 familiar with that parcel, first of all?

20 A Yes. I'm familiar with three parcels with  
21 this investigation --

22 Q Okay.

23 A -- that my dog ran. I don't specifically  
24 which  
25 time --

1 Q Okay.

2 A -- I ran what box, what number.

3 Q Okay. Okay. What about the first -- what  
4 was the first parcel? Do you recall that parcel,  
5 anything about that parcel?

6 A No, other than Inspector McStravick asked me  
7 to conduct a canine sniff of the parcel.

8 Q I see. And were there -- you said there  
9 were other parcels present. How many?

10 A Approximately five or six.

11 Q Five or six. And were you aware of the  
12 target parcel prior to the dog being exposed to the  
13 parcel?

14 A I was aware it existed.

15 Q Okay.

16 A I did not know where it was in the room, no.

17 Q Okay. Okay. And there were certain  
18 policies and procedures that you followed, am I  
19 correct?

20 A Nothing written, policies and procedures.  
21 There's a certain way I do things but there's no  
22 written policy or procedure.

23 Q All right. Okay. Okay. And so, you  
24 received certain training in regards to handling a --  
25 your dog, the canine. I believe his name was Kirby,

1 am I correct, or is Kirby?

2 A Yes.

3 Q Okay. And you received certain training.

4 And that training, did it consist of -- or what did it  
5 consist of at this point?

6 A Our initial training consisted of in  
7 training her with several odors that I wanted her to  
8 find. One being marijuana, cocaine -- first one being  
9 marijuana. Then cocaine, crack cocaine, heroin and  
10 methamphetamines.

11 Q Did it have anything to do with the actual  
12 method of exposing the dog to maybe a target parcel?

13 A I'm sorry. Did I have anything to do?

14 Q Did any of the training consist of --

15 A No.

16 Q -- the method --

17 A We did not specifically target any parcels  
18 at the time I was not involved with the postal  
19 inspectors or the task force -- I'm sorry -- with  
20 Kirby -- yes. I was already on the task force with  
21 Kirby at the time but I was not -- I was not running  
22 parcels. I just -- I make my -- I train my dog to be  
23 obedient to odor of drugs regardless of where it is.  
24 And I don't -- I don't specifically, like, target one  
25 area. They may have been in a box at some time during

1 her initial training, the narcotics, but I just -- I  
2 don't, you know, recall specifically.

3 Q Yeah. Well, were you trained in regards to  
4 the procedure to be utilized when your dog would be  
5 exposed to a target parcel?

6 A Well, there is no specific procedure.  
7 There's several ways I do it because I'm a full-time  
8 canine handler and I do things a certain way because I  
9 want a very proficient dog with very, you know, high  
10 percentage rate.

11 Q Okay. And so you said the dog was exposed  
12 to about five packages or so at the time that it  
13 alerted --

14 A At the time this target pa -- at the time  
15 the target package was there, yes.

16 Q Okay. Let me ask you --

17 THE COURT: Counsel, can you give me  
18 just one second, please?

19 MR. MILLER: Sure. Sure. Sure.

20 (Pause)

21 THE COURT: Thank you.

22 MR. MILLER: May I proceed?

23 THE COURT: You may continue.

24 MR. MILLER: Thank you.

25 BY MR. MILLER:

1 Q Detective, when was the first time that, in  
2 this particular, that -- I believe that Inspector  
3 McStravick contacted you in regards to this particular  
4 matter?

5 A This particular --

6 Q This particular case.

7 A This particular case? He had advised me at  
8 some point in the beginning of November that he had an  
9 investigation and would like to use Kirby should he  
10 have any parcels that he needed sniffed. And I told  
11 him just to call me whenever he needed her.

12 Q Did he later call you?

13 A Yes, he did.

14 Q And when was that?

15 A The first package was -- I -- I don't recall  
16 if it was November 11th was the first package and then  
17 the 12th with two more or the 12th was the first  
18 package and the 13th was two more. I don't --

19 Q So it was either the --

20 A 11th and 12th or the 12th and the 13th, yes.

21 Q Okay. And you say he contacted you?

22 A Yes.

23 Q Was this -- when was this? Day or night?  
24 What time?

25 A I believe it was during the day.

1 Q And when did -- did you go --

2 A Yes.

3 Q -- as a result of him contacting you?

4 A Yes.

5 Q Okay. And where did you go?

6 A I went to their office in the Bala Plaza off  
7 of -- in Bala Cynwyd off of City Line Avenue.

8 Q Okay. And do you know what time you got  
9 there?

10 A I do not.

11 Q Do you know if it was day or night?

12 MR. TULANTE: Your Honor, I'm going to  
13 object to the detailed nature of the time.

14 THE COURT: Sustained. Sustained.

15 BY MR. MILLER:

16 Q Well, did you make a report?

17 A No. There was no written report.

18 Q Okay. And let me ask you this. In regards  
19 to -- let me see which one is this.

20 MR. MILLER: Let me just find this,  
21 Judge.

22 THE COURT: Yes, sir.

23 MR. MILLER: Thank you, Your Honor.

24 (Pause)

25 BY MR. MILLER:



1 Q Okay.

2 MR. MILLER: Your Honor, if the witness  
3 can be directed to view the Defense Exhibit A.

4 THE COURT: Do you have it, ma'am?

5 MR. TULANTE: Is it marked? Any mark  
6 on it?

7 MR. MILLER: I don't know if he marked  
8 it, Your Honor. I don't think it was marked.

9 THE WITNESS: I have B, C and D which  
10 I'm --

11 MR. MILLER: May I mark it in red pen,  
12 Judge?

13 THE COURT: Yes.

14 MR. MILLER: Thank you.

15 THE WITNESS: Oh, here. I'm sorry.  
16 Yes. This is -- is that A?

17 MR. MILLER: Yes, it is.

18 THE WITNESS: Oh. I'm sorry. Okay.

19 MR. MILLER: Okay. And may I direct  
20 her attention to a particular page, Judge?

21 THE COURT: Yes, sir.

22 MR. MILLER: Thank you. Excuse me,  
23 Judge Jones. Judge Jones, can I ask -- tell the  
24 lawyer something?

25 THE COURT: Go ahead.

1 MR. MILLER: Thanks.

2 (Pause)

3 BY MR. MILLER:

4 Q Let me just ask you this.

5 MR. MILLER: If I may, Your Honor, I'm  
6 just going to approach with --

7 BY MR. MILLER:

8 Q Were you familiar with a package that was  
9 addressed to Maximilian Stone?

10 A I don't know who any of the packages were  
11 addressed to or what wording was on it. I did not pay  
12 attention to that.

13 Q Okay. Do you know what time, in any  
14 instance, what time your -- you were with your canine  
15 and your canine gave an alert in regards to any of the  
16 packages? Do you know any time?

17 A No, I don't know the exact time, no.

18 Q Okay. On no occasion with any of the  
19 packages?

20 A That's correct.

21 Q And you have no documentation or nothing --  
22 no evidence on your part that you have independently  
23 that would indicate time that -- or the date that  
24 specifically that your canine was utilized in this  
25 case?

1           A     I have a -- I do a monthly log that has --  
2     that says, you know, like if she gets called out,  
3     like, where she went, the date where she went or where  
4     the job was conducted at. And then, you know, just a  
5     brief description of what was found, if anything. And  
6     then, you know, a little notation on the right so I  
7     could remember what job it was or what postal  
8     inspector or DE agent, whatever kind of job it was who  
9     asked me to come out for it.

10          Q     And there's no time specifically on there,  
11     right?

12          A     No.

13          Q     And you submitted that documentation -- do  
14     you have that documentation with you today?

15          A     No, I do not.

16          Q     And so did you give that documentation to  
17     anybody? Specifically Mr. McStravick?

18          A     Yes. Yes, I did.

19          Q     You did? I see. And did you review that  
20     documentation prior to testifying here today?

21          A     No.

22          Q     When did you give that documentation to Mr.  
23     McStravick?

24                     MR. TULANTE: Your Honor, objection.

25                     THE COURT: Sustained.

1 MR. MILLER: No further questions.

2 THE COURT: Any questions?

3 MR. TULANTE: Your Honor, I have no  
4 questions.

5 THE COURT: Thank you. You may step  
6 down. Watch your step, please.

7 THE WITNESS: Yes. Thank you.

8 (Witness excused)

9 MR. MILLER: Judge, I have no other  
10 witnesses at this time. I don't mean to interrupt  
11 you. Sorry.

12 THE COURT: All right. Do you rest?

13 MR. MILLER: One second. No, Your  
14 Honor. I have no other witnesses and, yes, I rest at  
15 this time.

16 THE COURT: All right. Is there any  
17 rebuttal by the government?

18 MR. TULANTE: No, Your Honor. I do ask  
19 permission to get the inspector back in here.

20 THE COURT: Sure.

21 MR. MILLER: And may I have my witness

22 --

23 THE COURT: Sure.

24 MR. MILLER: -- come in -- or  
25 witnesses.

1 THE COURT: Sure.

2 MR. MILLER: The inspector as well as  
3 the detective.

4 THE COURT: Yes, sir.

5 MR. MILLER: Thank you, Your Honor.

6 (Pause)

7 THE COURT: All right. You may  
8 continue -- or proceed, actually.

9 (Pause)

10 THE COURT: Counsel, you may proceed.

11 MR. MILLER: Thank you, Your Honor.

12 Your Honor, the -- first of all, we  
13 talk about, on its face, the warrants themselves and  
14 does the defense have any objection to the warrants on  
15 their face. Well, I'm going to go specifically to the  
16 warrant that ends in 391 -- or package that deals with  
17 -- the warrant that deals with the package that ends  
18 in 391. That's the warrant that's not signed.

19 The long and the short is that, Judge,  
20 on its face, if we look at -- if we're making four  
21 corners arguments, and that is definitely our argument  
22 on this one, then on its face, Judge, this warrant is  
23 deficient. It's not signed. It's not signed by a  
24 proper issuing authority. That's number one.

25 Number two, in regards to 391, we also

1 have that the parcel is never indicated by any of the  
2 documentation that's a part of Defense Exhibit A or  
3 the addendum to Defense Exhibit A that the parcel ever  
4 was in Philadelphia. There's nothing on the product  
5 tracking system that indicates that the parcel was in  
6 Philadelphia. So that flies in the face --

7 THE COURT: Excuse me. Excuse me.

8 MR. MILLER: Sure.

9 THE COURT: Mr. Secured Party --

10 THE DEFENDANT: Yes.

11 THE COURT: I know that you need to  
12 speak with him but you're interrupting him and he's  
13 being distracted by that. Let him do what he's got to  
14 do. He knows what he's doing.

15 THE DEFENDANT: No disrespect, though.

16 I  
17 just --

18 THE COURT: No. Don't talk to me.  
19 That's between you and him. If there's something that  
20 you need to say to him, give him time to finish his  
21 thought or what he's saying, then ask for some time to  
22 speak with him. Then you can resume.

23 MR. MILLER: That's exactly --

24 THE COURT: Just being polite and  
25 courteous. But don't distract your attorney.

1 THE DEFENDANT: Okay.

2 THE COURT: All right.

3 MR. MILLER: And what I was saying  
4 simply, Judge, is that in regards to that article  
5 that's listed as the marking drug, I think 391, that,  
6 bottom line, on its face, it's not signed. Number  
7 two, on its face, in regards to the documents that  
8 were submitted to the Court as our exhibit, as Exhibit  
9 A as well as their addendum, the package was never in  
10 -- actually, let me see to make sure. The package was  
11 never even in the state of Pennsylvania.

12 And that all flies in the face of the  
13 four corners of the warrant. And if we're making four  
14 corners arguments then that would be outlined right  
15 there. And -- one second, Judge.

16 (Pause)

17 MR. MILLER: And, Judge, I just want to  
18 point out, too, that the affidavit says that the  
19 article that ends in 391 was in Philadelphia, was at  
20 the postal inspector's office, that that article was  
21 sniffed. That's not contained in the postal tracking  
22 records. That flies in the face of the postal  
23 tracking records. Because of that, we say that that -  
24 - that the article ever came to Pennsylvania or was  
25 ever in the state of Pennsylvania, that's a material

1 mistake. If it was not in Pennsylvania, if it was --  
2 then there would be no opportunity for an inspector to  
3 go ahead and do any type of examination. We don't  
4 have testimony from any witness that specifically --  
5 that article ending in 391 was ever exposed to Kirby,  
6 the dog. The handler was here. Specifically and --  
7 on the witness stand and said there were three  
8 packages but she couldn't identify those packages.  
9 She didn't know when. She knew where but she couldn't  
10 say that -- when she did this and where she did this  
11 was, in essence, conforming to the -- consistent with  
12 what's in this affidavit of probable cause, that a  
13 package specifically, with certain numbers on it,  
14 were -- was here in Pennsylvania and that Kirby, or  
15 the dog, and the handler were both there and were  
16 allowed to -- allow that particular package to be  
17 inspected by the canine. And that the canine gave an  
18 alert. Now, of course -- that's with 391. That's  
19 also true with the package that ends in 581. That's  
20 also true with regards to the package that ends in  
21 072.

22 Not only that, also we have testimony  
23 directly from the inspector himself saying that he's  
24 unfamiliar with some of the information that's  
25 contained in the product tracking system, specifically



1 in regards to a container generated or scanned.  
2 According to him, according to the testimony, we have  
3 that the inspector picks up a scanner and scans  
4 something. Or scans one of these packages. That was  
5 his testimony. I'm not -- I mean, I'm not -- okay?  
6 But that flies right in the face of the documentation.  
7 It says it was not a particular package but a whole  
8 container.

9 And, of course, when I say it wasn't  
10 even here in Pennsylvania on 391, that one was scanned  
11 in New Jersey. Did the officer go to New Jersey and  
12 scan it? I mean, we don't have that.

13 I think I talked about 581. If I did -  
14 - let me see -- well, then not only that but with  
15 regards to 581, we have something that flies right in  
16 the face of that. We have the time. If we're looking  
17 at the four corners of the document then the document  
18 was signed at 9:20. But that flies directly in the  
19 face of the product tracking system documentation that  
20 -- all these documents are documents that are -- we  
21 received from the government. This is not something  
22 that we produced. This is their documentation that  
23 says that that particular article which ends in 581  
24 was -- the warrant was signed at 9:20 but the parcel  
25 doesn't come to Philadelphia until 11 o'clock at

1 night. If we're talking about Mathilda (ph.)  
2 statements within the actual warrant itself, on its  
3 face, I think that we have shown that there is  
4 definitely evidence that flies in the face of what's  
5 on or within the four corners of the document. No  
6 question. And that -- and the documentation that we  
7 have shown or utilizing to show that there is some  
8 contradiction between what the warrant says itself and  
9 the documentation that we get from the government  
10 itself conflicts with what's within the four corners  
11 of the affidavit or within the search warrant.  
12 Material misstatements of fact.

13 In regards to Article 7(2), there's no  
14 testimony that can even, as I said already, that can  
15 even link the dog Kirby with this particular item. We  
16 have the handler herself. She has no knowledge of  
17 when, what time and what packages. None. And we  
18 suspected that. That was the reason there is no  
19 documentation because if there was documentation then  
20 it would be additional documentation to fly in the  
21 face of what we've already presented. And, yes,  
22 there's going to be an explanation of theirs that, no,  
23 this item was taken particularly out of the stream and  
24 out of the container and it was actually scanned by  
25 one of our offices or one of our inspectors. Sure,

1 that clears everything up. I would say to a jury, use  
2 your common sense and your everyday experiences and  
3 that he picks up a scanner and scans it. I would say  
4 no, Judge. That's not how it happened. At least  
5 that's not what the documentation says.

6 THE COURT: So how did it happen?

7 MR. MILLER: The documentation says --

8 THE COURT: No, no.

9 MR. MILLER: -- that it's a container -  
10 -

11 THE COURT: How did it happen?

12 MR. MILLER: Well, I can only go on  
13 what they gave me, Judge. All I can say is, is that  
14 it was in a container and it was scanned and not one  
15 particular document, not one particular item.

16 THE COURT: All right.

17 MR. MILLER: And that flies -- and it  
18 was scanned at 11 o'clock.

19 THE COURT: All right.

20 MR. MILLER: And based on what our  
21 witness says, Mr. Katerman, that it would be scanned  
22 here in Philadelphia, not taken to -- at the airport,  
23 not at some remote location. Okay. He hasn't been  
24 involved since 2011 with narcotics.

25 THE COURT: Okay. You made those

1 points. Now move on.

2 MR. MILLER: But he's familiar with the  
3 tracking system. And I think that's going to be a big  
4 issue that he's not familiar with narcotics here in  
5 the Philadelphia area. He talked about Reading,  
6 Pennsylvania, and Harrisburg and all those places that  
7 he hasn't been involved in narcotics in fifteen,  
8 twenty-five, thirty years. But he's familiar with the  
9 postal product tracking system documentation. He said  
10 specifically there's basically nothing new under the  
11 sun in this document that he's unfamiliar with. And  
12 he knows about the product tracking system.

13 THE COURT: All right. Wrap it up,  
14 please.

15 MR. MILLER: Okay, Judge. Yes, sir.  
16 Yes, sir. Yes, sir. So those are our points. That's  
17 the reason why we say there are material misstatements  
18 of fact. We have evidence of it. And the evidence  
19 comes from their own documentation. And we ask the  
20 Court to recognize that and to strike these warrants  
21 and the fruits of these warrants. Thank you, Judge.

22 THE COURT: Thank you.

23 MR. TULANTE: Your Honor, I admire Mr.  
24 Miller's energy a little bit after 5.

25 I think when counsel first filed the

1 motion, they -- on the basis for a suppression was  
2 lack of probable cause. I don't hear that and so I  
3 won't address that. There was a dog hit -- as we cite  
4 to the Court, in the Third Circuit, a dog hit without  
5 more is probable cause. So I want to move right to  
6 the Leon good faith analysis.

7           As Your Honor pointed out, that he has  
8 -- he has a heavy burden where an agent relies on --  
9 and a warrant that's issued by a neutral magistrate, a  
10 warrant, by the way, which is approved by our office.  
11 There has to be a -- pretty bad things to happen  
12 before that's suppressed. And we keep -- and one of  
13 the things that has sort of gone askew here is that  
14 Mr. Miller sort of very deftly identifies the four  
15 corners of the product tracking system, the four  
16 corners of some other document. It is the four  
17 corners of the affidavit, whether there are material  
18 misstatements there. And he hasn't identified any.  
19 He quibbles and nitpicks with timing and so forth, but  
20 if you go through paragraph by paragraph, he hasn't  
21 identified (a) -- (1) that they're misstatements; and  
22 (2) that they're material; or (3) that there's a  
23 mental state of recklessness or falsity that requires  
24 a suppression.

25           So the issue with 391 and 581, those

1 two packages which, on November 13, Judge Caracappa  
2 directed our office to sign, there's no question that,  
3 as I elicited in my redirect from Inspector  
4 McStravick, that as of 9:20 p.m. that the parcel was  
5 in the Eastern District and that there was a dog hit  
6 on it. And that was the time when the magistrate  
7 actually authorized the inspector to search it.

8 Now, under Rule 4.1, Your Honor, that  
9 would have been enough. You know, there's a duplicate  
10 warrant that could have been filed. But in this case,  
11 the government went a step further which is to go back  
12 to the magistrate the next day and have her  
13 essentially confirm what had happened and that the  
14 affidavit -- and re-swore the inspector. And so, Your  
15 Honor, there's not even a semblance of bad faith here.  
16 And Rule 4.1 itself, in addition to Leon, says that in  
17 order for suppression to be found, there really has to  
18 be bad faith. This is for -- under limited  
19 circumstances. And, Your Honor, you have an inspector  
20 who relies on the magistrate who says I authorize  
21 this, relies on her office. And there's been nothing  
22 shown, Your Honor, that there's any falsity in the  
23 four corners of the affidavit.

24 And let me talk a little bit about what  
25 Inspector -- former Inspector Katerman elicited. All

1 he -- you heard from him that he's not from -- he's  
2 been out for fourteen years which, in narcotics, is  
3 essentially a lifetime. And he can't testify as to  
4 what happens at Philadelphia Airport. Inspector  
5 McStravick can. And he testified, I think without  
6 contradiction -- and Mr. Miller and I are almost,  
7 like, we're two ships passing in the night because I  
8 hear his testimony that was presented, hear the  
9 testimony, and the testimony that I hear, frankly, is  
10 that the parcel came in. It was taken to Bala Cynwyd  
11 at which point it was presented to the dog. And then  
12 he participated in a telephone conference at 9:20.  
13 And then he opened both packages afterwards. And  
14 after Inspector McStravick left, he directed another  
15 inspector, Vuzavorski, to scan it. And so, we keep  
16 going back to this  
17 11:06 -- 11:06 time. It's irrelevant, Your Honor, for  
18 purposes of this proceeding because it's  
19 uncontradicted that by that time there had been a  
20 search done, there had been a search warrant issued by  
21 the magistrate judge. And again, I don't know where  
22 Mr. Miller is getting the notion that 11:06 is when it  
23 came in Philadelphia because, as Inspector McStravick  
24 said, that's just not the case, Your Honor.

25 So I step back. I feel like --

1 THE COURT: What is your argument  
2 regarding the Belmar, New Jersey?

3 MR. TULANTE: There's no evidence  
4 presented with respect to that. In other words,  
5 Inspector McStravick testified that there -- both  
6 packages were in Philadelphia at the time that he  
7 received authorization and the time that he searched  
8 that. I think he gave one at 9:25 and 9:30. I don't  
9 believe there was any testimony -- he wasn't asked  
10 about -- I think what happened, Mr. Miller showed that  
11 document to Inspector -- former Inspector Katerman but  
12 didn't show it to Inspector McStravick. So we have  
13 testimony as to one, I believe, 581, but not 391. So  
14 I don't have an argument because there was no -- that  
15 was not presented that conflict to Inspector  
16 McStravick. But I think the uncontradicted testimony  
17 is that he had two boxes. And when he left the office  
18 that they'd been searched and the kilograms of cocaine  
19 seized.

20 THE COURT: All right. Thank you very  
21 much. Both --

22 MR. MILLER: Judge, may I just point  
23 out one thing? That's about his letter -- not his  
24 letter but this particular document -- his e-mail --

25 MR. TULANTE: You're referring to



1 Exhibit D, I believe?

2 MR. MILLER: That's correct. And that  
3 would be the e-mail that Mr. Tulante penned.

4 THE COURT: I'll hear.

5 MR. MILLER: His own words.

6 THE COURT: I'll hear.

7 MR. MILLER: If I may read his own  
8 words, and he says there's no evidence --

9 THE COURT: Go ahead. Go ahead. Read  
10 it, please.

11 MR. MILLER: Okay. And this is -- next  
12 to the last line in that e-mail. "The package is all  
13 on planes." This is at 5:30 p.m. "The package is all  
14 on planes en route to Philadelphia International  
15 Airport and are not expected" -- this is e-mail to the  
16 judge --

17 THE COURT: Counsel, just tell me what  
18 you --

19 MR. MILLER: -- "are not expected to be  
20 presented to drug detection dog" -- "to the drug  
21 detection dog until 9:30 p.m. tonight at the  
22 earliest." He's saying that there's nothing that  
23 flies in the face and that flies in the face.

24 THE COURT: So the conspiracy --

25 MR. MILLER: Right.

1 THE COURT: The conspiracy is the  
2 inspector, the K9 officer, Mr. Tulante and,  
3 presumably, the dog --

4 MR. MILLER: Well, the conspiracy is  
5 that, bottom line, that the package wasn't in  
6 Philadelphia until later on, until after 9:30, based  
7 on his own words. It was not even expected to be in  
8 Philadelphia until --

9 THE COURT: But --

10 MR. MILLER: -- after 9:30 --

11 THE COURT: But if you're saying --

12 MR. MILLER: -- at the latest (sic).

13 THE COURT: If you're taking that  
14 position, my question still is, is that if Mr. Tulante  
15 participated in approving the warrant then he's a part  
16 of the conspiracy in your argument.

17 MR. MILLER: Well, I'm not going to go  
18 that far, Judge. All I'll say is, is that there are  
19 material misstatements of fact in the warrant. I'm  
20 not going to go that far to say that he knowingly and  
21 intentionally or none of that type. I'm not doing  
22 that. I would not do that. I'm not going to do that.  
23 I'm just saying that, you know, the facts stand on  
24 their own. The facts stand on their own. This  
25 statement stands on its own.

1 THE COURT: Right.

2 MR. MILLER: The documentation in  
3 regards to the product tracking system stands on its  
4 own.

5 THE COURT: Okay.

6 MR. MILLER: And we could say that  
7 there's nothing --

8 THE COURT: All right.

9 MR. MILLER: I don't know but I don't  
10 know how they can say that -- yes, sir.

11 THE COURT: All right. The Court  
12 orders that the record of this hearing be transcribed.  
13 The Court further orders that each side prepare  
14 proposed findings of fact and conclusions of law. How  
15 much time, Madame Deputy Clerk, will it take to get a  
16 transcript?

17 THE CLERK: I can have the transcript  
18 (indiscernible) Tuesday?

19 THE COURT: Yes.

20 THE CLERK: (Indiscernible) by Friday.  
21 We could probably even have it --

22 THE COURT: By Friday?

23 THE CLERK: -- before that but --

24 THE COURT: All right. Counsel, how  
25 much time do you need to prepare the proposed findings

1 of fact and conclusions of law from Friday, September  
2 12th? Mr. Miller?

3 MR. MILLER: Judge, I would probably  
4 need at least a week, at least a week or maybe even  
5 more depending upon your ruling on the motion for  
6 continuance because if we go to trial on the 23rd then  
7 I have to do some preparation for that. And I'm -- as  
8 I stated in my motion, approximately -- since the last  
9 three and a half weeks, approximately 300 pages. And  
10 I want to be ready and I'll do everything I can to be  
11 ready within a week's time after September the 12th.  
12 I'll do all that I can.

13 THE COURT: I guess I'm not  
14 understanding you. Are you asking for a continuance -  
15 -

16 MR. MILLER: I did file --

17 THE COURT: -- on the trial date?

18 MR. MILLER: I did file one, Judge.

19 THE COURT: I understand you filed one.  
20 My question is are you asking the Court for a  
21 continuance of the trial date.

22 MR. MILLER: One second, Judge.

23 (Pause)

24 MR. MILLER: Well, Judge, yes. I am  
25 asking the Court for a continuance in this matter in

1 light of the fact that we're already -- today is the  
2 9th. We're about two weeks out, approximately out.  
3 I'm not good at math but about two weeks out from the  
4 trial. And I am getting -- I haven't finished my  
5 investigation. And in order to even submit -- to do  
6 the groundwork so that certain points of the charge  
7 that I submitted to the Court -- and the way I  
8 submitted them, Judge, was not a verbatim but it came  
9 out of the model of points of charge for the Third  
10 Circuit but it was 2012, if I'm not mistaken. But one  
11 of them dealt with whether or not some of the  
12 government's witnesses were drug abusers. I just got  
13 the main and I don't even have a date -- I don't have  
14 a lot of information. I have to continue my  
15 investigation. I'm still in the investigative stage,  
16 Judge. I'm just getting material from the assistant  
17 DA -- assistant U.S. attorney. And so, yes, that's  
18 why I would ask for a continuance especially in light  
19 of the fact that you're asking for the findings of --  
20 proposed findings of fact and conclusions of law in  
21 this matter, Judge. And I could be ready within a  
22 week after receiving them, if given the opportunity.

23 THE COURT: So that --

24 MR. MILLER: Or I could be ready with  
25 the findings of fact and conclusions of law within a

1 week's time after receiving the notes of testimony  
2 which, of course, I know might be a greater hardship  
3 even on my client, or my client's family, financially  
4 with the number of pages that I would imagine are --  
5 would be involved in today's hearing. They may even  
6 need time to get that money together, Judge.

7 THE COURT: Well, I don't even want to  
8 go there. I have nothing to do with that whatsoever.

9 MR. MILLER: I'm saying that.

10 THE COURT: All right. Please don't  
11 raise that.

12 MR. MILLER: Yes, sir.

13 THE COURT: Now, Mr. Secured Party, do  
14 you understand what your counsel is asking?

15 THE DEFENDANT: I do. He's asking for  
16 a continuance of the trial date.

17 THE COURT: And currently, the trial is  
18 set for September 23rd.

19 MR. MILLER: Selection on the 22nd,  
20 Judge.

21 THE COURT: All right. So if the case  
22 is continued, this case would be continued really into  
23 October, just a few weeks later.

24 THE DEFENDANT: I don't have a problem  
25 with a few weeks later.

1 THE COURT: So October the 8th?

2 THE DEFENDANT: That's fine.

3 THE COURT: Is that a good time for  
4 everybody?

5 MR. TULANTE: No, you're not -- no,  
6 it's not, unfortunately, Your Honor. The case agent  
7 in this case, Inspector McStravick actually just  
8 learned today that Judge Dalzell, on the same date,  
9 set for trial another case. He's working with my  
10 colleague, Katayoun Copland, that's going to go to  
11 trial for sure. And so, he's an essential witness for  
12 the government for obvious reasons and he would be the  
13 government's key witness at trial to testify. And we  
14 can file a motion after that date is set along those  
15 lines if the Court wants to set that date. But it  
16 wouldn't work for us.

17 THE COURT: Is there an anticipated  
18 finality to this trial in terms of your necessity of  
19 being in each case?

20 MR. MCSTRAVICK: Your Honor, I believe  
21 until the 14th when it would close.

22 THE COURT: October 14th?

23 MR. MCSTRAVICK: Yes, sir.

24 (Pause)

25 MR. MILLER: Would work, Judge. The

1 15th is a good date for me.

2 THE COURT: October 15th?

3 MR. MILLER: Yes. Not the 14th but the  
4 15th. I have something but I can work around it.

5 (Pause)

6 THE COURT: Counsel, I am inclined to  
7 direct the production of the transcript and forego the  
8 submission of proposed findings of fact and  
9 conclusions of law. Do it myself -- without being --  
10 but since I have the transcript and certainly that  
11 encompasses the arguments of counsel and all the  
12 evidence that was presented today and go forward with  
13 this case as a trial as scheduled on September 23rd.  
14 Okay. Can we do that?

15 MR. MILLER: Judge, I would appreciate  
16 an opportunity to handle the new material, the  
17 hundreds of pages of new material that I received  
18 within the last couple weeks. I would appreciate at  
19 least a brief -- a couple of weeks to be able to do  
20 that.

21 THE COURT: Well, it's going to be a  
22 couple weeks. It's going to be between now and the  
23 23rd of September. That's two weeks.

24 MR. MILLER: I understand. I  
25 understand.



1 But --

2 THE COURT: You're talking about a  
3 couple weeks beyond the 23rd?

4 MR. MILLER: Just a couple of weeks,  
5 Judge. Maybe a week or two. Maybe at least two  
6 weeks.

7 THE COURT: The problem is that would  
8 take us to the 7th. Witness has indicated that he's  
9 unavailable as of the 8th.

10 MR. MILLER: Yes, sir.

11 THE COURT: And he won't be available  
12 again until the 14th or the 15th of October. I am  
13 sitting on that entire week -- well, first of all, the  
14 13th is Columbus Day. It's a legal holiday. The  
15 14th, he's unavailable. The 15th, presumably we're  
16 all available. That would be a jury selection date.  
17 The 16th could be a trial date. And unavailable the  
18 17th, which is Friday. Then while I am available and  
19 presumably we're all available the following entire  
20 week from the 20th of October through the 24th, I am  
21 unavailable again the 27th, 28th and 29th. The  
22 problem is, is that if we proceed with a jury, I don't  
23 want to interrupt a jury trial particularly toward the  
24 end of the case for that projected length of time.  
25 And clearly, Mr. -- the secured party is chomping at

1 the bit to go forward with this case on the 23rd. And  
2 it's his case.

3 MR. MILLER: That's correct, Judge.  
4 And I don't want to do anybody a disservice at the  
5 same time. But like you said, it is his case, Judge.  
6 It is his life.

7 THE COURT: And my concern is if he  
8 request or if there's a continuance request, if he's  
9 not going to buy into it, then there's going to be  
10 problems because I insist that he give a colloquy  
11 that's waiving the rule, the speedy trial rule. And  
12 if he's not going to do that then it's not the  
13 government's fault and certainly not the Court's  
14 fault.

15 MR. MILLER: No. I understand, Judge.  
16 I understand, Judge. I understand. Understand. And  
17 when you mention the speedy trial issue, Judge, I did  
18 -- something was pointed out to me in regards to your  
19 ruling in regards to that when we got your order. It  
20 was docketed as a civil matter as opposed to a  
21 criminal matter. Really -- I mean, I -- you know, and  
22 -- I don't -- you know, there really, at this  
23 point -- really, technically, hasn't been a --

24 THE COURT: Well, I think we all know  
25 it's not a civil matter. So I don't --

1 MR. MILLER: Well, I know. I know.

2 But I'm just saying --

3 THE COURT: I don't know how it  
4 happened but --

5 MR. MILLER: Yes, it is.

6 THE COURT: -- clearly, that's not even  
7 an issue.

8 MR. MILLER: Right. Yes, sir.

9 THE COURT: So unless Mr. Secured Party  
10 is going to say I'm going to waive the speedy trial  
11 rule, it's going to have to be the 23rd. Mr. Tulante?

12 MR. TULANTE: Your Honor, I was waiting  
13 to -- for the Court's ruling on the defense motion  
14 because I just learned last night that the government  
15 may have a basis for a motion for continuance  
16 ourselves. And the basis is this. I learned last  
17 night that one of the cooperating witnesses had a  
18 pretty major accident where he broke his hip and he  
19 broke his shoulder. Defense counsel told me this.  
20 He's in the hospital today.

21 MR. MILLER: Not me.

22 MR. TULANTE: Excuse me?

23 MR. MILLER: You said defense counsel.

24 MR. TULANTE: No, no, no, no. No, no.

25 I'm sorry.

1 MR. MILLER: Oh, about the city.

2 MR. TULANTE: I apologize.

3 MR. MILLER: On the state.

4 MR. TULANTE: I apologize.

5 MR. MILLER: I don't believe --

6 MR. TULANTE: Counsel for that witness

7 has informed me that he's having pins placed in his

8 hip. And, Your Honor, he's an essential witness.

9 He's the witness

10 who -- he's someone who we presented at grand jury.

11 He provided part of the basis for superseding the

12 indictment on August 27th. And I haven't -- I tried

13 to get in touch with Mr. Azurano (ph.) -- Jeff

14 Azurano, his attorney, to learn his fate. But he's

15 someone who -- he's not -- his testimony is not

16 cumulative or duplicative of other witnesses. And I

17 was -- in light of defense's motion, I was awaiting --

18 I anticipated that was going to occur. But in light

19 of the Court's ruling, the government -- we would seek

20 a motion on that basis. And until at least I can

21 learn from him what his mental -- what his state will

22 be, physical state --

23 THE COURT: Can you apprise the Court

24 within the next twenty-four hours?

25 MR. TULANTE: Absolutely. Absolutely.

1 THE COURT: Before I make a ruling on -  
2 -

3 MR. TULANTE: Absolutely.

4 THE COURT: -- granting the government  
5 the continuance request?

6 MR. TULANTE: Absolutely. I will -- I  
7 tried to get in touch with Mr. Azurano during breaks  
8 and I wasn't able to. And I'll attempt again.

9 THE COURT: All right. At this point,  
10 I'm going to defer ruling on everything for twenty-  
11 four hours. Mr. Secured Party, is that acceptable to  
12 you, sir?

13 THE DEFENDANT: Based on --

14 THE COURT: Based on this recent  
15 revelation  
16 of -- this revelation just now regarding the  
17 government's witness.

18 THE DEFENDANT: No.

19 THE COURT: Because I'm asking him, or  
20 actually directing him to inform the Court within the  
21 next twenty-four hours --

22 THE DEFENDANT: Well --

23 THE COURT: -- what the status of that  
24 witness is.

25 THE DEFENDANT: Okay. But with no

1     disrespect, how Mr. Miller had made a point about my  
2     family finances or whatever and you were saying that  
3     it was, like, really irrelevant to --

4                     THE COURT:  No.  I said that because  
5     judges do not get ever involved in money.

6                     THE DEFENDANT:  Okay.

7                     THE COURT:  All right?

8                     THE DEFENDANT:  So --

9                     THE COURT:  I am not -- that's why I  
10    said that.  And I don't, never have, never will.

11                    THE DEFENDANT:  Okay.  Well --

12                    THE COURT:  This is different.  This is  
13    simply the availability of a witness.  You've not said  
14    and Mr. Miller didn't say that a witness wasn't  
15    available for you.

16                    THE DEFENDANT:  Okay.

17                    THE COURT:  All right?

18                    THE DEFENDANT:  Okay.  Now then is  
19    though the government has the burden of proof to prove  
20    their -- these allegations.  I don't agree to any type  
21    of continuance on their behalf.  That their witness is  
22    not available, that's really not my problem or my  
23    issue.  So I do not agree.

24                    THE COURT:  All right.  So tomorrow --  
25    ultimately, the buck stops here.  I need to make the

1 decision. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Now, Ms. El-  
4 Shabazz, we're in here tomorrow anyway, right?

5 THE CLERK: (Inaudible).

6 THE COURT: All right. Where?

7 THE CLERK: (Inaudible).

8 THE COURT: Okay, because I'm not  
9 certain which courtroom physically I'll be in. Can  
10 you call tomorrow morning and we'll let you know?

11 MR. TULANTE: Absolutely.

12 THE COURT: But I can certainly set it  
13 for a time certain.

14 MR. MILLER: Your Honor, did you want  
15 to do any type of conference call or anything like  
16 that? Or --

17 MR. TULANTE: He has to be available.

18 THE COURT: No, because I want Mr.  
19 Secured Party to be present.

20 MR. TULANTE: Available.

21 THE COURT: And he can't do that -- he  
22 can't be present if we do a conference call. I want  
23 him to be in the courtroom.

24 (Whispered conversation off the record)

25 THE COURT: 2 o'clock tomorrow

1 afternoon?

2 MR. TULANTE: 2 o'clock? Okay.

3 MR. MILLER: Yes, sir, Your Honor.

4 THE COURT: All right. Mr. Secured  
5 Party, 2 o'clock?

6 THE DEFENDANT: 2 o'clock.

7 THE COURT: All right. Again, I'm not  
8 certain which room. And to those of you in the  
9 audience, family members, that listing tomorrow at 2  
10 o'clock is really just for me to make a determination  
11 based on what I'm told from the government regarding  
12 the availability of a witness. Witness case is going  
13 to go for trial. All right? So nothing other than  
14 that is going to happen.

15 UNIDENTIFIED SPEAKER: So we're not  
16 allowed to be here?

17 THE COURT: No. You have a right to be  
18 here if you want to be here. I'm just simply letting  
19 you know that this could take all of five or ten  
20 minutes. That's courtesy to you. Okay?

21 UNIDENTIFIED SPEAKER: Thank you.

22 THE COURT: All right. So tomorrow at  
23 2 o'clock. And again, if you contact Mr. Miller,  
24 he'll let you know what room we're going to be in  
25 tomorrow if you want to come down. All right?



1 MR. TULANTE: Yes. Thank you.

2 THE COURT: Thank you very much. Let  
3 us adjourn for the day.

4 MR. MILLER: Excuse me, Your Honor.  
5 Will you be ruling in regards to our motion that I  
6 filed, motion to compel discovery?

7 THE COURT: If that needs to be ruled  
8 upon, I'll certainly rule upon it. I think you  
9 generally can work that out, can't you?

10 MR. TULANTE: Well, he can provide -- I  
11 think the only things remaining are Jenks. And we set  
12 a time to provide that. I mean, we responded  
13 identifying the categories.

14 MR. MILLER: I really don't know what  
15 is -- what -- I know that I don't have certain things.  
16 And but I don't know what all it consists of, Judge,  
17 because I don't have -- I can't talk --

18 THE COURT: All right. You gentlemen  
19 need to meet and work that out.

20 MR. MILLER: Okay.

21 THE COURT: And what you can't work  
22 out, let me have it.

23 (Proceedings concluded at 5:34 p.m.)

24 \* \* \* \* \*



25

CERTIFICATION

I, Sheila G. Orms, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: September 11, 2014

Signature of Approved Transcriber

   
\_\_\_\_\_

LISA BECK (CET\*\*D-486)

AAERT Certified Electronic Transcriber

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